







Dialogueon Globalization

OCCASIONAL PAPERS
GENEVA

N° 46 / November 2009

Olivier De Schutter

International Trade in Agriculture and the Right to Food





Dialogue on Globalization

Dialogue on Globalization contributes to the international debate on globalization — through conferences, workshops and publications — as part of the international work of the Friedrich-Ebert-Stiftung (FES). Dialogue on Globalization is based on the premise that globalization can be shaped into a direction that promotes peace, democracy and social justice. Dialogue on Globalization addresses "movers and shakers" both in developing countries and in the industrialized parts of the world, i.e. politicians, trade unionists, government officials, business people, and journalists as well as representatives from NGOs, international organizations, and academia.

Dialogue on Globalization is co-ordinated by the head office of the Friedrich-Ebert-Stiftung in Berlin and by the FES offices in New York and Geneva. The programme intensively draws on the international network of the Friedrich-Ebert-Stiftung – a German non-profit institution committed to the principles of social democracy – with offices, programmes and partners in more than 100 countries.

This Occasional Paper is published by the Geneva office of the Friedrich-Ebert-Stiftung.

November 2009

Table of Contents	
Preface	3
1. International Trade in Agriculture and the Right to Food – Executive Summary	2
2. Introduction	ε
3. The Normative Content of the Right to Adequate Food	7
4. The Current Challenges Facing the Realization of the Right to Adequate Food	9
5. Trade Liberalisation in Agriculture	12
 6. The Impacts of Trade Liberalisation in Agriculture on the Right to Food. 6.1. The Macro-Economic Impacts of Trade Liberalization: the International Division of Labor and Increased Dependency on International Trade. 6.2. The Micro-Economic Impacts of Trade Liberalization: the Impact on the Shape of the Global Food Supply Chain and the Dualization of the Farming Sector. 6.3. The Non-Economic Impacts of Trade Liberalization: Environmental and Health Dimensions. 6.4. Conclusion. 	2
7. Reconciling Trade with the Right to Food	40
8. Conclusions and Recommendations	

ISSN 1614-0079 ISBN 978-3-86872-232-1

The material in this publication may not be reproduced, stored or transmitted without the prior permission of the copyright holder. Short extracts may be quoted, provided the source is fully acknowledged. The views expressed in this publication are not necessarily the ones of the Friedrich-Ebert-Stiftung or of the organization for which the author works.

Preface

Deriving from the Right to Live, the Right to Food guarantees every human being to be free from hunger. In essence, the Right to Food entitles people to a very basic right, namely to dispose of the means to feed themselves in dignity. Yet, this right is being violated million times on a daily basis throughout the world. Human rights are not only moral guidelines; they represent legal obligations that have to be respected throughout national and international policy formulation. The Right to adequate Food is one of them. It is accepted universally – in the Charter of the United Nations (UN), in binding treaties ratified by a large number of states (e.g. International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child), voluntary guidelines, as well as in political commitments made by heads of state. Most recently, the 2009 World Summit on Food Security in Rome confirmed the commitment of all states, to work towards the realization of the Right to Food.

Following from this, it is evident that States need to respect their obligations under one regime when entering agreements in another – in the context of this paper, this means respecting human rights obligations they have committed to by ratifying the respective Covenants when entering trade agreements at the international level. In this Occasional Paper, based on the report of his mission to the World Trade Organization (WTO), the UN Special Rapporteur on the Right to Food, Professor Olivier De Schutter, calls for a reform of the international trade system aiming at strengthening the special role of agriculture in trade agreements to ensure their compatibility with the states' obligation to fulfill their population's Right to Food. The strength of his argument is that in conclusion he shows actual possibilities to reconcile trade policy with human rights requirements.

The author argues that the current international trade system, governed through the agreements made at the WTO and on regional or bilateral levels, sustains the advantages for developed countries and hinders the expansion of benefits for developing countries. In the case of agricultural trade, the main problem identified is the nature of trade flows – developing countries mostly export commodities and import processed goods. This kind of trade benefits the economically powerful elite, but does not yield the same results for large parts of the – often rural – populations of developing countries.

De Schutter also finds that the current multilateral trade regime furthers dependency of states on international markets in the pursuit of food security. His answer is to turn away from further liberalization towards maintaining national policy space.

Friedrich-Ebert-Stiftung aims at contributing to coherence between human rights and trade policy. It is our conviction that international trade can work for social as well as economic development, while safeguarding the rights of the disadvantaged. International trade often sees winners and losers, also within national borders. We believe that applied human rights policies can ensure that the vulnerable parts of the populations can be compensated and internal distribution of benefits can to a certain extent be organized in an equitable way. With the publication of this paper, which touches upon highly disputed issues, we would like to contribute to the discussion on the future design of trade policies that aim at fulfilling what is set out in the preamble of the WTO Marrakesh Agreement: conducting trade with a view to raising standards of living in accordance with the objective of sustainable development.

Felix Kirchmeier Geneva Office Friedrich-Ebert-Stiftung



International Trade in Agriculture and the Right to Food* Executive Summary

The present paper seeks to explore the relationship between the Agreements concluded under the framework of the World Trade Organization (WTO), particularly the Agreement on Agriculture, and the obligation of the Members of the WTO to respect the human right to adequate food to which they have committed themselves by ratifying the International Covenant on Economic Social and Cultural Rights. The author is the UN Special Rapporteur on the Right to Food. This paper is based on his mission to the WTO and it constitutes an elaboration of the report he prepared on the basis of that mission for the UN Human Rights Council.

The Preamble of the Marrakech Agreement establishing the WTO recognizes that, far from being an end in itself, the encouragement of trade by the establishment of a rules-based system of international trade and by the gradual lowering of barriers to trade should serve the ends of human development. The paper argues that, if this objective is to be fulfilled, and if trade is to contribute to the realization of the right to adequate food, the regime of international trade needs to recognize the specificity of agricultural products, rather than to treat them as any other commodities; it should also allow more flexibilities to developing countries, particularly in order to shield their agricultural producers from the competition from industrialized countries' farmers.

For countries that have a competitive agricultural sector, the expansion of international trade in agricultural commodities can have a growth-enhancing effect and improve their trade balance. These benefits should be balanced against other potential impacts on the right to food, however. The paper documents three such potential impacts. First, the development of global supply chains results in an increased dependency on international trade, for both net food-exporting countries and for net food-importing countries. This may lead to a loss of export revenues for agricultural exporters when the prices of export commodities go down, as well as to threats to local producers when low-priced imports arrive on the domestic markets, against which these producers are unable to compete. Conversely, when prices rise, the dependency of low-income net food-importing countries on the food commodities they buy on the international markets can lead to balance of payments problems against which the mechanisms currently established within the WTO have failed to protect them. Second, the expansion of global supply chains increases the role of large transnational corporations of the agrifood sector, vis-à-vis both producers and consumers. This creates a potential for abuses of market power in increasingly concentrated global food supply chains and may lead to increase the dualization of the domestic farming sector between

^{*} This paper expands on a report presented to the Human Rights Council session of March 2009 by Prof. Olivier De Schutter, the UN Special Rapporteur on the right to food, following his mission to the World Trade Organisation (A/HRC/10/005/Add.2).

subsistence farming on the one hand and export agriculture in cash crops on the other. Third, the expansion of trade in agricultural commodities has potential impacts on the environment and on human health and nutrition, impacts that usually receive little attention in international trade discussions, despite their close relationship to the right to adequate food.

The author proposes ways to reconcile trade with the right to food, addressing the failure of global governance mechanisms to tackle the lack of coordination between human rights obligations and trade commitments – a failure which mechanisms ensuring a better coordination at the domestic level may not be able to compensate for. The paper concludes by inviting States to assess the impacts of trade agreements on the right to food and ensure they do not accept undertakings under the WTO framework which would be incompatible with their obligations to respect, protect and fulfill the right to adequate food.

Introduction

This paper asks which impact the multilateral trading system has on the ability of the WTO Members to comply with their obligations towards the right to adequate food.

This paper seeks to explore the relationship between the Agreements of the World Trade Organization (WTO) and the obligation of the Members of the World Trade Organization to respect the human right to adequate food, as recognized under international law. The most important achievement of the General Agreement on Tariffs and Trade (GATT) and, since 1994, the WTO, has been to provide States with a rule-based, predictable international trade system, now backed by the threat and imposition of economic sanctions under the Dispute Settlement Understanding (DSU) of the WTO. This paper asks which impact the multilateral trading system thus set up has on the ability of the WTO Members to comply with their obligations towards the right to adequate food. But it explores, especially, which incentives trade liberalization in agricultural commodities creates for governments, and whether such incentives are conducive to the full realization of the right to adequate food. The objective of this inquiry is to assist WTO Members in the negotiation and implementation of their commitments under the multilateral trade framework, in order to ensure that their commitments under trade agreements will support, rather than undermine, their efforts to realize the right to food at domestic level. Most WTO Members are bound by the provisions of the International Covenant on Economic, Social and Cultural Rights (Art. 11) and of the Convention on the Rights of the Child (Art. 24 and 27) that recognize the right to food; and all must respect the Universal Declaration of Human Rights, that guarantees the right to food in Article 25. These obligations should be complied with at all times, including in the negotiation, conclusion and implementation of trade agreements. In order to assist States in complying with these obligations, this paper seeks to draw the attention of the governments to the potential implications of the commitments they make in multilateral trade negotiations.

The report concludes by suggesting which solutions may be found to reconcile the right to food with a workable trading system.

The paper is divided in six chapters. It recalls the normative framework under which the relationship between the obligation to respect the human right to adequate food and the undertakings under the WTO agreements should be analyzed (II.). It then describes the challenges the full realization of the right to adequate food faces in the world today (III.). Only if we correctly understand those challenges can we evaluate the potential impacts of the WTO agreements on the enjoyment of the right to adequate food and on the ability of the members of the WTO to realize this right (IV. and V.). The report concludes by suggesting which solutions may be found to reconcile the right to food with a workable trading system (VI.).

The Normative Content of the Right to Adequate Food

The right to adequate food is recognized under Article 25 of the Universal Declaration on Human Rights¹ and under Article 11 of the International Covenant on Economic, Social and Cultural Rights.² It is also referred to in Article 24 and 27 of the Convention on the Rights of the Child.

Under these instruments, States must respect existing access to adequate food, by abstaining from adopting measures which may result in preventing such access; they must *protect* the right to food by adopting measures ensuring that enterprises or individuals do not deprive individuals of their access to adequate food; finally, they must *fulfill* (*facilitate*) the right to food, by pro-actively strengthening people's access to and utilization of resources and means to ensure their livelihood. In addition, 'whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfill* (*provide*) that right directly'. But only in the most exceptional circumstances is the right to adequate food about the right to be fed. It is primarily about the right to feed oneself in dignity, either by producing food, or by gaining incomes sufficient to procure food on the markets.

The realization of the right to adequate food should guide the establishment of efforts aimed at developing a multilateral trading system. Article 28 of the Universal Declaration of Human Rights states that 'everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized'. This provision is certainly one of the most underestimated of the clauses of that document. It recognizes the co-dependency of national and international measures in the fulfillment of human rights. The right to adequate food can only be fully realized by States within a multilateral trading system which enables them to pursue policies aimed at realizing the right to food. Such a system should not only refrain from imposing obligations which directly infringe upon the right to food. It should also ensure that all States have the policy space they require to take measures which contribute to the progressive realization of the right to food under their jurisdiction, and are able to use it. As stated by the Committee on Economic, Social and Cultural Rights, the body of independent experts monitoring compliance with the International Covenant on Economic, Social and Cultural Rights, this instrument requires that they 'move as expeditiously as possible towards that goal' by making 'full use of the maximum available resources'.4

States must respect existing access to adequate food, by abstaining from adopting measures which may result in preventing such access.

The right to adequate food is primarily about the right to feed oneself in dignity.

The realization of the right to adequate food should guide the establishment of efforts aimed at developing a multilateral trading system.

G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948).

² Adopted on 16 December 1966, G.A. Res. 2200(XXII), U.N. GAOR, 21st sess., Supp. No. 16, U.S. Doc. A/6316 (1966), 993 UNTS 3. The right to adequate food is also referred to in the Convention on the Rights of the Child (Article 24 (2) (c)), and in the International Convention on the Elimination of All Forms of Discrimination Against Women (Article 12 (2)).

³ U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999), The right to adequate food (art. 11), U.N. doc. E/C.12/1999/5, at para. 15.

⁴ E/C.12/1999/5, para. 9.

The obligation to move towards the realization of the right to food must be facilitated, not impeded, by the organization of the multilateral trade regime. Indeed, Article 11(2) of the Covenant itself, which recognizes the 'fundamental right of everyone to be free from hunger', also requires States to adopt, 'individually and through international cooperation, the measures, including specific programs, which are needed, taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need'. It thus refers to food imports (and the corresponding exports) as a means to ensure the fundamental right to be free from hunger. Indeed, ensuring the right to food may require that food will have to travel from regions which have a surplus to regions which have a deficit in food. Yet, the approach to international trade based on the right to food presents three specificities that oblige us to adopt a more complex understanding of the relationship between the right to food and trade in agricultural commodities. First, such an approach shifts the perspective from aggregate values – from the benefits of trade for the country as a whole - to the impacts of trade on the most vulnerable and food insecure. Just like increases in production in any one country are not sufficient to combat hunger if, in that country, a group of the population lacks the purchasing power to buy the food which is available on the markets,⁵ the expansion of volumes of traded goods is not an answer to hunger if it leads, not to poverty reduction and decreasing inequalities, but to the further marginalization of those who are not benefiting from trade and, instead, may be made more vulnerable by trade liberalization. Second, the adoption of a human rights framework to international trade also leads to emphasize the dimensions of participation and accountability in the negotiation and implementation of trade agreements. Third, the framework based on the right to adequate food takes into consideration, not only the need to ensure a sufficient intake of calories for each individual, but also the availability and accessibility of adequate food, i.e., containing the required micronutrients for the physical and mental development of the individual, and culturally acceptable. These dimensions - the distributive impacts, participation, and adequacy of foodstuffs available - are generally absent from discussions about the impact of trade on food security. This report seeks to bring them back in.

Amartya K. Sen, *Poverty and Famines. An Essay on Entitlement and Deprivation*, Oxford Univ. Press, Oxford, 1981. See also Jean Drèze and Amartya K. Sen, *Hunger and Public Action*, Oxford Univ. Press, Oxford, 1989. Food insecurity exists even in countries where there is food in abundance, due to the lack of purchasing power necessary to purchase within segments of the population. Some 11 percent of households in the United States (and 18 percent of children) – 12.6 million people – lack access to adequate food at some point in the year. Yet, even after exports, the domestic supply of food in the U.S. is about double the amount which would be required to feed all the population (Sophia Murphy, Securing Enough to Eat, International Institute for Sustainable Development (IISD). January 2005).

4

The Current Challenges Facing the Realization of the Right to Adequate Food

In order to identify which regulation of international trade is most conducive to the realization of the human right to adequate food, we need to understand clearly the nature of the threats the right to food is currently facing. These threats fall under two categories.

4.1. The availability of food: quantitative dimensions and efficiency in production

First, there arises the question whether, in the future, agriculture will be able to feed the planet, and whether each country will be able to feed its population, through a combination of local production and food imports. Population growth, combined with the switch to more protein-rich diets in a large portion of developing countries which are succeeding in their fight against poverty, as well an increased competition for the use of farmland between production of crops for food and for fuel, increase the pressure on the supply side of the global equation.⁶ Climate change, in addition, is threatening the ability of entire regions, particularly of regions living from rainfed agriculture, to maintain actual levels of agricultural production. In Sub-Saharan Africa, as well as in Eastern Asia and South Asia, climate change will affect rains, increase the frequency of droughts and average temperature, and threaten the availability of fresh water for agricultural production. The UNDP reports an estimate according to which by 2080, the number of additional people at risk of hunger could reach 600 million, as a direct result of climate change. In Sub-Saharan Africa, arid and semi-arid areas are projected to increase by 60-90 million hectares, and the Intergovernmental Panel on Climate Change has estimate that in Southern Africa yields from rainfed agriculture could be reduced by up to 50 percent between 2000 and 2020.8 Another research estimates that, while losses in agricultural production in a number of developing countries, particularly in Sub-Saharan Africa, would be partially compensated by gains in other regions, the overall result would be a decrease of at least 3 percent in productive capacity by the 2080s. But the losses would be 16 percent if the anticipated carbon fertilization effects fail to materialize, so that 'a prudent range for impact on global agricultural capacity by the 2080s (...) [could] lie in the range

By 2080, the number of additional people at risk of hunger could reach 600 million, as a direct result of climate change.

⁶ See, on these factors, UN Special Rapporteur on the Right to Food, Background note: Analysis of the World Food Crisis, 2 May 2008: http://www2.ohchr.org/english/issues/food/docs/SRRTFnotefoodcrisis.pdf. See also The Feeding of the Nine Billion: Global Food Security for the 21st Century. Chatham House Report, by Alex Evans, January 2009, see: http://www.chathamhouse.org.uk/publications/papers/view/-/id/694/

⁷ UNDP, Human Development Report 2007/2008. Fighting Climate Change: Human solidarity in a divided world, 2007, p. 90 (citing Rachel Warren, Nigel Arnell, Robert Nicholls, Peter Levy and Jeff Price, 'Understanding the Regional Impacts of Climate Change', Research Report prepared for the Stern Review on the Economic of Climate Change, Research Working Paper No. 90, Tyndall Centre for Climate Change, Norwich).

⁸ IPCC, Climate Change 2007: Climate Change Impacts, Adaptation and Vulnerability. Working Group II Contribution to the Fourth Assessment Report of the Intergovernmental Panle on Climate Change (S. Solomon, D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller, eds), Cambridge Univ. Press, Cambridge and New York, chapter 9.

of reductions of 10 to 25 percent', with most severe losses in agricultural productivity being located in developing countries, particularly in Africa and Latin America. These findings are further confirmed by a recent article published in Science.

It comes as no surprise if, in this context, food security is said to be achievable by improved trade: if entire regions may lose their ability to produce enough food to feed their population, and international trade may be required in order to satisfy the increased needs of net-food-importing countries. The volumes of food traded are predicted to more than double between 2000 and 2030 under a business-as-usual scenario, that is, if we do not massively invest in improving agriculture in Africa and if we do not improve the capacity of the concerned countries to cope with climate change. And indeed, as we have seen, Article 11(2) of the International Covenant on Economic, Social and Cultural Rights alludes to the fact that, while certain regions may be producing too little food to feed their population, other regions may have surpluses: the free flow of food commodities would therefore be desirable, in that it allows to link the supply from food-surplus regions to food-deficit regions.

4.2. The accessibility of food: distributive dimensions and purchasing power

However, the presumption that trade permits the efficient transfer of food supplies from surplus to deficit regions fails to take into account the wide differences in purchasing power of different regions, and the fact that hunger and malnutrition are generally not the result of the lack of food availability, but rather of the inability for the poorest segments of the population to have access to food at an affordable price. Under a hypothetical fully liberalized trade regime, in the absence of transaction costs, food commodities would flow not from surplus to deficit regions, but from regions where food is produced at the most competitive prices to regions where there is a solvent demand, i.e., where the purchasing power of the populations is sufficient, in comparison to other markets, including the domestic markets of the source country. It should come as no surprise therefore if certain countries are net exporters of food, while at the same time have a large segment of their population which is hungry. And among the net-food-importing countries, a heavy dependence on food imports may not be a problem for some, since their revenues from exports are largely sufficient to make this solution sustainable; in contrast, for other countries, whose trade balance is negative or almost negative, being net importers may not be sustainable.

This is simply an illustration of the larger point that food availability, while certainly a necessary condition for the enjoyment of the right to adequate food, is not

Hunger and malnutrition are generally the result of the inability for the poorest segments of the population to have access to food.

⁹ William R. Cline, Global Warming and Agriculture. Impact Estimates by Country, Center for Global Development and the Peterson Institute for International Economics, 2007, at p. 96.

¹⁰ David B. Lobell, Marshall B. Burke, Claudia Tebaldi, Michael D. Mastrandrea, Walter P. Falcon, and Rosamond L. Naylor, 'Prioritizing Climate Change Adaptation Needs for Food Security in 2030', Science, 1 February 2008, vol. 319, pp. 607-610 (showing, on the basis of an analysis of climate risks for crops in 12 food-insecure regions, that South Asia and Southern Africa are two regions that, without sufficient adaptation measures, will likely suffer negative impacts on several crops that are important to large food-insecure human populations).

Mark W. Rosegrant, Siwa Msangui, Timothy Sulser, and Claudia Ringler, 'Future Scenarios for Agriculture: Plausible Futures to 2030 and Key Trends in Agricultural Growth', background paper prepared for the World Development Report 2008.

a sufficient condition. Indeed, the second part of the challenge we are facing - and the most pressing challenge today – is one of accessibility of food for the poor and the marginalized. Trading more food will not help them if they are excluded from production and have no means to buy the food which arrives on the markets; and producing more food will not assist them in purchasing food if their incomes remain too low. The majority of hungry people in the world are located in developing countries, live in rural areas, and depend on agriculture directly or indirectly for their livelihoods. They are hungry because they are poor: they are mostly net buyers of food, 12 and their incomes, which are on average significantly lower than those or the non-rural populations, 13 are insufficient to buy the food which they do not produce themselves. Today, over one billion people are hungry. Of these, it is estimated that 50 percent are among the approximately 2.1 billion smallholders who currently are living off 2 hectares of cropland or less. 20 percent are landless laborers, often working in sub-standard conditions, without a fixed employment and paid below subsistence wages - altogether, there are 700 million farm laborers in the world, producing food which is for them in many cases too expensive to purchase. 10 percent of the hungry are pastoralists, fisher folk, and forest users. The remaining 20 percent are the urban poor.¹⁴ Any trade regime which does not benefit these categories, far from solving it, is likely to lead to further violations of the right to food.

Our challenge today is not simply to produce more food, and to ensure that food flows as freely as possible from food-surplus to food-deficits regions. It is to produce it in a way which preserves the environment, particularly by reducing the amount of greenhouse gas emissions which contribute to global warming; and it is especially to organize such production so that it raises the incomes of those who are, today, most food insecure - smallscale farmers and agricultural laborers in developing countries -, and so that it allows States to adequately protect the urban poor. The question is whether the project on which the WTO framework was built - progressively lowering the barriers to trade, whether in the form of tariffs or non-tariff barriers - contributes to these objectives, or whether it may make them more difficult to achieve - and if the latter, which measures can be taken to channel international trade in a direction which is more conducive to the realization of the right to adequate food. It is this question that this paper addresses. No position is adopted on whether, in comparison to the existing regime, the proposals made in the Doha Development Round of trade negotiations will bring about a significant improvement. This author shares the conviction of many that the current regime is severely distorted in favor of industrialized countries, and that it should be mended urgently. But we first cannot avoid asking the more fundamental question of whether more trade is a desirable objective, or whether the incentives it creates for states to invest into an export-oriented model of agriThere are 700 million farm laborers in the world, producing food which is for them in many cases too expensive to purchase.

cultural development do more damage than they bring about benefits.

¹² The World Bank, World Development Report 2008 - Agriculture for Development, Nov. 2007, at p. 109 (box 4.7.) (comparing the representation among the poor smallholders of net buyers of food, self-sufficient or net sellers: in all seven countries surveyed (Bolivia, Ethiopia, Bangladesh, Zambia, Cambodia, Madagascar and Vietnam), the two first categories are a strong majority among the poor smallholders).

¹³ M. Ataman Aksoy, 'The Evolution of Agricultural Trade Flows', in M. Ataman Aksoy and John C. Beghin (eds), *Global Agricultural Trade and Developing Countries*, The World Bank, Washington, D.C., 2005, 17, at 19 (noting that '[o]n average, farmers are poorer than nonfarmers in developing countries (...). In all developing countries, rural households have lower average incomes than nonrural households. The ratio of rural incomes to nonrural incomes ranges from 40 to 75 percent, a relationship that remains consistent across groups of developing countries').

 $^{14\}quad \text{U.N. Millennium Project, Halving Hunger: } \textit{It Can be Done, Summary Version of the Report of the Task Force on Hunger (New York: The Earth Institute at Columbia University, 2005), p. 6.$

Trade Liberalisation in Agriculture

While other WTO agreements, particularly the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS), may have an impact on the right to adequate food – since they affect access to productive resources by food producers –, the Agreement on Agriculture (AoA) constitutes the most important of the WTO agreements in the context of this paper, which focuses on the impact of trade liberalization in agricultural commodities on the enjoyment of the right to adequate food. The discussion in this paper is therefore limited to this Agreement.¹⁵

5.1. The Agreement on Agriculture and the Doha Round of World Trade Negotiations

Although agriculture
was never formally
exempted from the GATT
disciplines, agriculture
did occupy a highly
specific position until the
successful completion of
the Uruguay Round.

Although agriculture was never formally exempted from the GATT disciplines, agriculture did occupy a highly specific position until the successful completion of the Uruguay Round of trade negotiations (1986-1994), which put an end to its insulation from the trade liberalization process. The AoA essentially imposes on the parties three sets of obligations.

(1) First, they must increase market access for agricultural products. Under the AoA, all quantitative restrictions or other non-tariff measures except those justified by health and safety reasons should be replaced by tariffs (Art. 4.2), and Members should subsequently bind themselves to reduce these tariffs (Art. 4.1). ¹⁶ Products that are the predominant staple in the traditional diet of a developing country may be exempted from the tariffication obligation, however (Art. 5).

Despite its promises, the process of tariffication and subsequent lowering of tariffs did not work equally for benefit of all developing countries. Some developing countries, particularly in Sub-Saharan Africa, rely more on agricultural products than on manufactured goods for their export revenues. Yet, average agricultural tariffs remain much higher than tariffs for non-agricultural products. Moreover,

¹⁵ See also the Report prepared on this issue by the High Commissioner for Human Rights, submitted in accordance with the Commission on Human Rights resolution 2001/32, E/CN.4/2002/54 (15 January 2002). In addition, see Melaku G. Desta, 'Food Security and International Trade Law: An Appraisal of the World Trade Organization Approach', 35 J. of World Trade 449 (2001); Chris Downes, 'Must the Losers of Free Trade Go Hungry? Reconciling WTO Obligations and the Right to Food', 47 Virginia J. of Int. L. 619 (2007); Carmen G. Gonzales, 'Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries', 27 Colum. J. Environmental L. 433 (2002); Kerstin Mechlem, 'Harmonizing Trade in Agriculture and Human Rights: Options for the Integration of the Right to Food into the Agreement on Agriculture', Max Planck Yearbook of United Nations Law, Vol. 10, 2006, pp. 127-190; Mark Ritchie & Kristin Dawkins, 'WTO Food and Agricultural Rules: Sustainable Agriculture and the Human Right to Food', 9 Minnesota J. of Global Trade 9 (2000).

¹⁶ Developed countries were to cut their tariffs by an average of 36% over 6 years; developing countries were to reduce their tariffs by an average of 24% over 10 years; least-developed countries are not imposed any reduction commitments (see AoA, Art. 15.2).

despite the special advantages recognized to least-developed countries¹⁷ in initiatives such as the 'Everything But Arms' initiative of the EU (see below), high tariffs were maintained on developing country export products such as cotton, sugar, cereals and horticulture. Tariff peaks were maintained, and the tariffs on tropical products remain higher and more complex than those on temperate zone products. In addition, tariff escalation, which protects the processing industries of importing countries, creates an obstacle to the diversification of exports and the export by developing countries of higher value-added products. This perverse structure of tariffs – which systematically disadvantages developing countries and works against, not in favor of, these countries climbing up the ladder of development – is one of the major sources of discontent with the current multilateral trading regime.

(2) Second, the members must reduce the level of domestic support (calculated through the concept of 'Aggregate Measure of Support' (AMS)18). But these subsidies are treated differently depending on how much they are considered tradedistorting. Three different categories are established. A first, residual category, is referred to as the 'Amber Box' subsidies. All Members may provide product specific support up to a de minimis threshold (5 % of the total value of production of the good concerned per year for developed countries; 10 % for developing countries), and non-specific support for the same percentage, for instance to provide seeds or fertilizers to producers. Few of the developing countries in fact have the financial means required to reach those levels of support. Beyond the de minimis threshold, Members must refrain from the introduction of new forms of support; and they must reduce the existing domestic support they provide to their agricultural producers by 20 % from the base period of 1986-1988 for developed countries, and by 13.3 % for developing countries (LDCs are not under any obligation to reduce domestic support, although they are to bind support levels). Since these percentages are calculated on the basis of the Base Total Aggregate Measurement of Support in the base period, the arrangement is most beneficial to countries which already had high levels of support during the base period, since their advantage can be to a certain extent maintained. In that sense, the AoA maintains and legitimizes imbalances between countries, based on their respective ability to support their agricultural producers.

Some forms of support to domestic agricultural producers do not fall under the undertakings described above. 'Blue Box' measures are direct payments made against production-reducing commitments, a system which is particularly important to the European Union under the Common Agricultural Policy. These payments

The AoA maintains and legitimizes imbalances between countries, based on their respective ability to support their agricultural producers.

¹⁷ There are altogether 48 least-developed countries (LDCs). The African LDCs are: Angola, Benin, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, The Gambia, Guinea, Guinea-Bissau, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Uganda and Zambia. The LDCs in the Asia-Pacific region are: Afghanistan, Bangladesh, Bhutan, Cambodia, Kiribati, Lao People's Democratic Republic, Maldives, Myanmar, Nepal, Samoa, Solomon Islands, Timor-Leste, Tuvalu, and Vanuatu.

¹⁸ This refers to the levels of support received for each product, as calculated under the complex rules set out in annexes 3 and 4 of the Agreement on Agriculture. AMS includes (1) 'price support', measured by multiplying the difference between the applied administered price and the world market price by the quantity of production eligible to receive the administered price; (2) product-specific subsidies; and (3) non-product-specific subsidies. Whether they are product-specific or non-product-specific, subsidies are included in the calculation of the current total AMS only if they exceed the relevant de minimis level.

are considered to be less trade-distorting, since they do not encourage overproduction and dumping of surpluses on the international markets. These measures are therefore exempted from reduction commitments under the AoA. Again however, these are not forms of support developing countries can afford for their farmers: this exemption in practice only benefits producers in the North, and there is no prohibition to export to developing countries the products which are thus indirectly subsidized. Finally, 'Green Box' measures are considered not to distort trade or to distort trade only minimally; they too are exempt. Domestic support measures may be placed in this category (a) if they are 'provided through a publicly-funded government program (including government revenue foregone) not involving transfers from consumers'; and (b) if they not have the effect of providing price support to producers (Annex 2 AoA, 1). Such measures are, for instance, investments in research, in marketing and promotion, or they may consist in the provision of rural infrastructures (although the 'subsidized provision of on-farm facilities other than for the reticulation of generally available public utilities' and 'subsidies to inputs or operating costs' are explicitly excluded), but also public stockholding for food security purposes or domestic food aid, provided it is distributed 'subject to clearly-defined criteria related to nutritional objectives'.

(3) Third, the Members must reduce existing export subsidies, and they may not introduce new export subsidies not already in operation in the 1986–1990 base period. Under the AoA, developed countries must reduce their export subsidies by 36% in value terms and by 21% in terms of the volumes benefiting from subsidies over a period of six years, as compared to the base period. Developing countries are subjected to fewer obligations in this regard, and they have longer implementation periods. The LDCs are under no obligation to reduce whichever export subsidies they may have. However, since the introduction of any new export subsidies is prohibited, the system has in fact been advantageous to the developed countries, as these were the only category of States to have significant export subsidies in place prior to the entry into force of the AoA.

Export subsidies are the most harmful form of subsidies for the developing countries. They lead to subsidized products arriving on domestic markets and displacing local production, which typically cannot benefit from levels of support which would allow it to remain competitive. In the short term, this means that the groups of the population in developing countries that are not producers competing with the imported products will benefit from cheaper prices. This has led certain commentators to note that developing countries that are net food-importing countries and their populations would, in general, be hurt by the inflationary impact of the removal of subsidies, aggravating the impact on food security of the current peak in prices.¹⁹ But this also leads to a form of addiction to low-priced foods on the

¹⁹ See Arvind Panagariya, 'Agricultural Liberalisation and the Least Developed Countries: Six Fallacies', World Economy: Global Trade Policy (2005), pp. 1277-1299. See also Joseph Stiglitz and Andrew Charlton, Fair Trade for All. How Trade can promote Development, Oxford Univ. Press, 2005, repr. 2007, at p. 233 ('[developed countries'] domestic production support for price-sensitive necessities that are widely consumed in developing countries should be reduced gradually, with some of the savings in developed country subsidy budgets being directed at ameliorating the adjustment costs of those in the developing world. Many developing countries in North Africa, Sub-Saharan Africa and Latin America (though not Brazil, Argentina, or Mexico) rely on imports of subsidized grains and oilseeds from OECD producers. [These] countries are particularly exposed to agricultural reforms which might increase the price of some commodities').

international markets that is not sustainable. In the long term, subsidies, particularly export subsidies, discourage local production in the importing countries, and create instead a dependency on international markets that represents a major source of vulnerability, particularly as the prices on international markets will be increasingly volatile.

A number of provisions seek to accommodate what the preamble of the AoA refers to as 'non-trade concerns', among which 'food security and the need to protect the environment' are explicitly mentioned. In particular, measures adopted by developing countries which seek to encourage agricultural and rural development, investment subsidies in agriculture, and agricultural input subsidies generally available to low-income or resource-poor producers in those countries, are exempted from domestic support reduction commitments that would otherwise be applicable to such measures (Art. 6.2). Other provisions aim at ensuring special and differential treatment for developing countries, in the form of longer implementation periods and reduced commitments (Art. 15). Yet, overall, the obligations established under the AoA clearly fit under a program of trade liberalization in agricultural products. The expectation, when the Uruguay Round was completed, was that this program would lead to increased food prices. 20 Article 16 of the AoA therefore provides that, in order to counteract the negative impacts this might produce on net food-importing developing countries, developed country Members shall take the measures provided for under the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries ('Marrakesh Decision'). In sum, while food security is recognized as a legitimate objective, it is to be achieved in principle not by retreating from the program of trade liberalization in agriculture,

In the Ministerial Doha Declaration of 14 November 2001, the WTO members committed themselves to 'comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support'. And they agreed to make special and differential treatment for developing countries 'an integral part of all elements of the negotiations'.²¹ At the Hong Kong

bring them sufficient export revenues to buy food from abroad.

but by supporting countries through the reform program, including where necessary by the delivery of food aid. This is the core philosophy underlying the system of the AoA. It is one which is premised on the ability of international markets to provide food security. And, consistent with the idea that trade shall lead to allocative efficiency, it is one which considers that, far from having to achieve a certain degree of self-sufficiency in food, countries should specialize in whichever production in which they have a comparative advantage, as this would suffice to

Export subsidies, discourage local production in the importing countries, and create instead a dependency on international markets.

²⁰ More recent analyses have sought to estimate the increases of real international commodity prices following complete trade liberalization: for example, increases are estimated to be 20.8 % for cotton, 15.1 % for oilseeds, 11.9 % for dairy products, 7.0 % for coarse grains, or 5.0 % for wheat (The World Bank, World Development Report 2008, cited above, p. 107 (fig. 4.6)). It is not clear which methodology has been followed to arrive at these estimates. It is important to note, however, that the level of prices on international markets will not be determined by the production costs of farmers from OECD countries, without the subsidies they currently benefit from: instead, since a relatively small percentage of the total food produced in fact is traded internationally, those prices will be close to the marginal cost of the most competitive producers from countries such as Brazil, Uruguay, or Argentina, which combine a high degree of mechanization with very low wages for agricultural workers.

²¹ WT/MIN(01)/DEC/1, para. 13.

WTO Ministerial Conference of 2005, it was agreed that export subsidies would be ended by 2013; that developing countries can themselves designate some products as 'special products' for which tariff reductions will not be very stringent; and that developing countries can retain their permissible *de minimis* level of domestic subsidy. At the time of writing, the Doha Round of world trade negotiations still has not been concluded. It is stumbling particularly on the discussions surrounding the trade-distorting impacts of various forms of domestic support provided by developed countries to their farmers, and on the specifics of the special safeguard measure. The purpose of this paper, however, is not to offer any detailed commentary of these negotiations. Rather, it is to identify whether the general direction in which trade liberalization is moving under the framework of the AoA, thus summarized, is compatible with the members' obligations towards the right to food.

There is general agreement that the current regime of international trade is not a satisfactory one. In particular, it has not worked for the benefit of smallholders in developing countries, which form the majority of those who are hungry in the world today. On the one hand, on their own domestic markets, agricultural producers from developing countries have often been facing unfair competition from highly subsidized products exported by farmers from OECD countries. Government support to farmers in OECD countries was 258 billion USD in 2007, representing 23% of total farm receipts in these countries. 22 This is the lowest level of support since 1986 (when the estimates first were available) in proportion of the production value. But it still represents a very high level of support, against which developing countries are unable to compete. On the other hand, producers from these countries have been facing important obstacles when seeking access to the highvalue markets of industrialized countries. They have failed to benefit even from preferential schemes such as the African Growth and Opportunity Act or the Caribbean Basin Initiative of the United States, the Everything But Arms initiative adopted by the European Union in favor of Least-Developed Countries, or the Cotonou Agreement between the EC and the ACP countries.²³ This failure may be attributed, in part, to the complexity of the rules involved - particularly the requirements resulting from rules of origin –, and to the non-tariff barriers which potential exporters face, linked in particular to standards requirements, including not only standards adopted under the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade, but also standards set by private buyers.²⁴ Finally, as already mentioned, many

²² Agricultural Policies in OECD Countries: At a Glance, OECD, Paris, June 2008.

²³ For Africa, see UNCTAD, Economic Development in Africa 2008 – Export Performance Following Trade Liberalization: Some Patterns and Policy Perspectives, 2008, chap. 2.

M. Garcia Martinez & P. Poole, 'The Development of Private Fresh Produce Safety Standards: Implications for Developing and Mediterranena Exporting Countries', Food Policy, 29(3), pp. 229-55; L.J. Unnevehr, 'Food Safety Issues and Fresh Food product Export from LDCs', Agricultural Economics, 23(3), pp. 231-40. See however, for a less pessimistic view, Steven M. Jaffee and Spencer Henson, 'Agro-Food Exports from Developing Countries: The Challenges of Standards', in M. Ataman Aksoy and John C. Beghin (eds), Global Agricultural Trade and Developing Countries, cited above, chap. 6 (showing that in countries where the private sector is well organized and in which the public sector supports the efforts of exporters, producers have been able to enter markets such as for seafood an fresh fruit and vegetable). In their study of the vegetable export chain in Senegal, Johan F.M. Swinnen and Miet Maertens conclude that exports grew despite tightening standards: such tightening, they conclude, led to a shift from smallholder contract farming to integrated estate production, leading poorest households to benefit through being employed on such estates rather than by producing themselves for the global markets (M. Maertens & J.F.M. Swinnen, 'Trade, Standards and Poverty: Evidence from Senegal', LICOS Centre for Institutions and Economic Performance & Department of Economics, KUL, 2008).

agricultural products are currently facing tariff peaks and tariff escalation (higher tariffs on processed products) which discourage diversification into higher value-added products, leading developing countries to an excessive dependence on an often limited number of primary commodities.²⁵

As a result of a regime that is heavily biased against the interests of developing countries, the domestic agricultural sector in these countries has been unable to attract investment over the past thirty years. This leads to a vicious cycle in which this sector, because it faces unfair competition, further loses competitiveness. Indeed, not only did private investment not flow into this sector: it is also one which the governments have for many years neglected. The World Bank notes in its World Development Report 2008 - Agriculture for Development, that 'the agriculture-based countries have very low public spending in agriculture as a share of their agricultural GDP', at an average of 4% in 2004.26 The World Bank's Independent Evaluation Group (IEG) recognizes that this failure is one of the international community as a whole, including of the World Bank itself.²⁷ Specifically, according to the IEG, too little has been done to support irrigation; to take into account the challenges posed by the great diversity of agro-ecological conditions in Africa; to devise effective strategies for countries to maintain their own food security; and to expand small farmers' access to credit and to markets, by improvements in transport infrastructure. The percentage of official development assistance going to agriculture has been declining significantly between 1980 and 2005, moving from 18 percent to only 4 percent of total ODA.²⁸ While the prices of agricultural inputs rose, farmers were not supported to cope with these cost increases, and their productivity suffered as a result. In addition, structural adjustment policies imposed on many developing countries as a condition for access to loans led to dismantle whichever public support schemes existed in the past in favor of their agricultural sector, both in order to reduce public deficits and in order not to distort the price signals. In the process, a larger number of Sub-Saharan African countries became net food importers.

The World Bank notes that 'the agriculture-based countries have very low public spending in agriculture as a share of their agricultural GDP', at an average of 4%.

The percentage of official development assistance going to agriculture has been declining significantly between 1980 and 2005, moving from 18 percent to only 4 percent of total ODA.

5.2. The Illusory Notion of a "Level Playing Field"

The negative impacts of the current distortions are real. It does not follow, however, that the solution consists simply in the removal of the existing distortions. One reason for this is that improved access to export markets for farmers from developing countries will benefit only some of these, and not the most vulnerable, unless affirmative action is taken to support the latter. But another reason is that, if trade is to work for development and to contribute to the realization of the right Improved access to export markets for farmers from developing countries will benefit only some of these, and not the most vulnerable.

²⁵ A.F. McCalla & J. Nash, Reforming Agricultural Trade for Developing Countries. Key Issues for a Pro-Development Outcome of the Doha Round, vol. I, World Bank, Washington D.C., 2007.

²⁶ The World Bank, World Development Report 2008 - Agriculture for Development, 19 October 2007, p. 7.

²⁷ Independent Evaluation Group of the World Bank, The World Bank's Assistance to Agriculture in Sub-Saharan Africa: An IEG Review, October 2007.

²⁸ This calculation of the author is based on the figures collected by the OECD Development Assistance Committee (DAC). See also Danielle Resnick, 'Smallholder African Agriculture: Progress and Problems in Confronting Hunger and Poverty', DGSD Discussion Paper No. 9, IFPRI, July 2004.

Differences in productivity per active agricultural laborer between the most efficient and the least efficient producers amount to 1/1000.

to adequate food, it needs to allow more flexibilities to developing countries and to ensure that the flexibilities that are recognized are more operational, particularly in order to shield their agricultural producers from the competition from industrialized countries' farmers - thus, more protection rather than less. The reason for this is obvious, and it is at the heart of what justifies special and differential treatment for developing countries: even after the removal of existing trade-distorting measures, which currently are disproportionately benefiting developed countries, the productivity per active laborer in agriculture will remain much lower in developing countries, on the average, than in developed countries. In 2006, agricultural labor productivity in LDCs was just 46 percent of the level in other developing countries and below 1 percent of the level in developed countries. In addition, these massive differences in productivity are increasing: labor productivity grew by only 18 percent in LDCs between 1983 and 2003, by 41 percent in other developing countries and by 62 percent in developed countries.²⁹ Depending on the kind of equipment available to farmers in LDCs or in developing countries, some estimates suggest that the differences in productivity per active agricultural laborer between the most efficient and the least efficient producers amount to 1/1000 or more.30

In this context, the idea of establishing a 'level playing field' is meaningless. The deepening of the reform program under the AoA (improved market access, limits on domestic support and the phasing out of export subsidies) will not result in agricultural producers from most developing countries being able to compete on equal terms with producers from industrialized countries or from the most competitive and highly mechanized producers of certain other developing countries, unless the wages in the least competitive chains are repressed at very low levels to compensate for a much lower productivity per active laborer. Certain developing countries have a highly mechanized agricultural sector and, particularly since the wages in the agricultural sector remain comparatively low in comparison to those in OECD countries, have a strong comparative advantage in agriculture and would clearly benefit from the removal, or at least the lowering, of the tradedistorting subsidies of the developed countries.³¹ But in other developing countries, particularly LDCs, agriculture remains a fragile sector, as a result of lack of investment in agriculture for a number of years. Encouraging these countries to open up their agricultural sector to competition by binding themselves to low rates of import tariffs would therefore be entirely inappropriate, particularly if we take into account that food insecurity is mostly concentrated in the rural areas and that a large portion of the population in the countries which are most vulnerable depends on agriculture for their livelihoods: in 2000-2003, 70 % of the eco-

²⁹ UNCTAD, The Least Developed Countries Report, 2006 – Developing Productive Capacities (UNCTAD/LDC/2006), p. 137.

³⁰ Marcel Mazoyer, 'Pauvreté paysanne, sous-alimentation et avenir de l'humanité', in St. Desgain & O. Zé (dir.), *Nourrir la planète*, éd. Luc Pire, pp. 10-29, at p. 20.

³¹ This is the case, in particular, for countries in the Cairns Group (Argentina, Brazil, Chile, Colombia, Costa Rica, Indonesia, Malaysia, Philippines, South Africa, Thailand and Uruguay).

nomically active population was engaged in agriculture in the LDCs, as against 52 % in other developing countries, and 3 % in the developed countries.³²

It deserves emphasis that neither the failure of many developing countries to invest sufficiently in agriculture, nor the damage caused to their agricultural sector by the lowering of import tariffs on agricultural products, are attributable to the disciplines of the WTO. The main responsibility for this situation lies with the international financial institutions, particularly with the structural adjustment programs imposed on States, as a condition for their access to loans, in the 1980s. 33 Domestic policies too may often be faulted for having paid too little attention to agriculture, and for having sacrificed the long-term interest of the country in strengthening their agricultural sector, to the short-term interest of governments in the arrival of food at low prices on local markets. Conversely, adequate domestic policies can be a condition for any opportunities created by improved market access to materialize, for example by removing supply-side constraints facing producers or by helping to meet adjustment costs.

But attributing blame is of limited usefulness. What does matter is to assess the impact of trade liberalization by taking into account the reality of the constraints developing countries are currently facing. In many cases, these constraints make it difficult or impossible for them to implement policies at domestic level which would allow them to maximize the benefits from trade, while minimizing the negative impacts, particularly by fully using the flexibilities they are allowed. It would be irresponsible to simply presume that such complementary domestic policies can be implemented adequately in the countries concerned, with a speed commensurate to the impact of trade liberalization itself. Indeed, to a large extent, as a result of the wide differences between the *applied* and the bound tariff rates in agriculture, the current applied regime of agricultural trade is not far removed from what would result from any further commitments that should result from the successful conclusion of the Doha Round of negotiations. Yet, with few exceptions, developing countries' governments having been unable to take the measures which would alleviate the problems referred to above – insufficient market access

Neither the failure of many developing countries to invest sufficiently in agriculture, nor the damage caused to their agricultural sector by the lowering of import tariffs on agricultural products, are attributable to the disciplines of the WTO.

³² UNCTAD/LDC/2006, p. 137. It is however difficult to generalize across LDCs, because international comparable data are scarce. Only 5 LDCs (three in Africa and two in Asia and Pacific) report data on employment, including 3 (Bangladesh, Tanzania and Uganda) which have trend data. See UN Economic and Social Council, Meeting the Challenges of Employment Creation and Productivity Growth in Africa and the Least Developed Countries, Geneva, 5 July 2006.

³³ On the impact of structural adjustment programs on economic growth and on the ability of the countries concerned to fulfill social and economic rights, see, among many others, Adam Przeworski and James Raymond Vreeland, 'The Effects of IMF Programs on Economic Growth', *The Journal of Development Economics*, vol. 62 (2000), pp. 385–421. M. Rodwan Abouharb and David L. Cingranelli, *Human Rights and Structural Adjustment*, Cambridge University Press, 2007, conclude that 'World Bank and IMF structural adjustment agreements lowered levels of government respect for economic and social rights, contributing to a deterioration in the situation for the mass of the population in these countries. The impacts of these agreements have been detrimental to those countries entering into them, even accounting for the selection effects of these institutions. (...) Instead of promoting high-quality or equitable economic growth that lifts the poor out of poverty and social misery, the consequences of these programs have been to perpetuate these conditions.' (p. 149). Others have demonstrated that the adverse impact of IMF-led programs on economic growth (confirmed also by Axel Dreher (2006), IMF and Economic Growth: The Effects of Programs, Loans, and Compliance with Conditionality', *World Development*, 34(5), pp. 769–788) are concentrated on labor, while benefiting capital whose share of income increases (James Raymond Vreeland (2002), The Effects of IMF programs on Labor', *World Development* 30(1), 121–139).

In Sub-Saharan Africa in particular there may be no private sector robust enough to adjust and seize what some describe as the opportunities of trade liberalization.

for producers from developing countries and a vulnerability of these producers to import surges on their own domestic markets –. The lesson is that we should not too lightly presume that these countries have the ability to adapt to the context shaped by international trade: while governments may be unable to take all appropriate measures to do so – for instance, in Sub-Saharan Africa in particular, as a result of the removal of State institutions (such as crop marketing boards) which supported agricultural producers until the early 1980s³⁴ –, there may be no private sector robust enough to adjust and seize what some describe as the opportunities of trade liberalization.

³⁴ UNCTAD, Economic Development in Africa 2008 – Export Performance Following Trade Liberalization: Some Patterns and Policy Perspectives, 15 September 2008, chap. 2, pp. 37–47.

The Impacts of Trade Liberalisation in Agriculture on the Right to Food

The impacts of the removal of barriers to trade in agriculture on the right to food are examined at three levels. At the macro-economic level, trade liberalization may constitute an obstacle to diversification and lock countries into development patterns which are not sustainable; and it may increase the vulnerability of countries as a result of their dependency on international trade, at the same time fragilizing the situation of agricultural producers in certain developing countries (1.). At the micro-economic level, trade liberalization contributes to reshaping the global food supply chain in a way which favors transnational corporations, whose freedom to act is broadened at the same moment as the regulatory tools States may resort to are being limited (2.). But the economic impacts are not all that matters. International trade in agricultural commodities also has profound impacts on the environment, and on nutrition and health, which States cannot ignore (3.).

6.1. The Macro-Economic Impacts of Trade Liberalization: the International Division of Labor and Increased Dependency on International Trade

6.1.1. The International Division of Labor

Trade liberalization encourages each country to specialize into the production in which it has a comparative advantage. The promise of trade liberalization is that by creating incentives for producers from different States to specialize in the products or services in which they have a comparative advantage, it will benefit all the trading partners, since it will lead to efficiency gains within each country and to increased overall levels of world production. Extensions of the classical 'static' theory of comparative advantage suggest that economic growth and poverty alleviation may result.

There are a number of problems with this view. First, the standard theory is based on assumptions that may be questionable. It assumes that there exists in the States concerned a private sector at once sufficiently robust and sufficiently flexible to act on price signals from the market. It also presupposes that economic growth will result in poverty alleviation through a 'trickle-down' effect. But we have seen that the agricultural sector in Sub-Saharan Africa for instance, was in such a state at the end of two decades of structural adjustment programs that is was unable in fact to respond to the price signals: in many cases, it has been so neglected that it is unable to move beyond subsistence agriculture. As to the automatic existence of a 'trickle-down' effect remains contentious among economists: it has been demonstrated instead that in certain cases – depending on how trade is managed

Trade liberalization encourages each country to specialize into the production in which it has a comparative advantage.

– inequalities and poverty could increase as a result of trade liberalization.³⁵ As Joseph Stiglitz writes: 'The theory of trade liberalization (under the assumption of perfect markets, and under the hypothesis that the liberalization is fair) only promises that the country as a whole will benefit. Theory predicts that there will be losers. In principle, the winners could compensate the losers; in practice, this almost never happens'.³⁶

Whether or not a country is competitive in agriculture depends heavily on political choices.

Reliance on comparative advantage should not be a pretext for impeding the climb of developing countries up the ladder of development, including in the agricultural sector.

But the idea of specialization of countries through international trade is problematic for other reasons, once it is put forward as a prescription applicable throughout all countries and for all sectors. Whether or not a country is competitive in agriculture depends heavily on political choices: how much is invested in rural infrastructure, in irrigation or in developing access to microcredit, or how much support is given to farmers to compensate for insufficiently remunerative prices? Although of course countries are constrained in what they may produce by natural factors, these policy choices are decisive, in agriculture as in other sectors, in defining the position of a country in the international division of labor. We must therefore ask which incentives result from the lowering of barriers to trade, in the definition of these policy choices. Is there a risk that countries will have an incentive to specialize in the production of raw commodities only, once they realize that other countries have already achieved important economies of scale in certain lines of production? Is this conducive of long-term development? Reliance on comparative advantage should not be a pretext for impeding the climb of developing countries up the ladder of development, including in the agricultural sector, by moving towards the export of more value-added goods, for instance processed foods.³⁷ But it is precisely this prospect which is made more distant, not nearer reach, by trade liberalization, when it transforms itself from a means to ensure development, to an end to be pursued for its own sake. As a result of past history, while industrialized countries have been able to build a comparative advantage in manufactured products or in services, most developing countries, particularly the least developed countries, have been relegated to the production of raw materials, particularly agricultural commodities. As Galeano has written, the result is that these countries have been specializing in losing, when industrialized countries have been specializing in winning³⁸: because returns are decreasing in agriculture while they are increasing in the production of manufactured goods or services, the current international division of labor is systematically working against the interests of developing countries. These countries have been advised to open themselves to international trade before their industries were ready to compete - indeed, in many cases, before they had any industrial sector at all. It has been highlighted by a number of economists that the result of this would be that the terms of trade would further deteriorate for countries forced to open up to international trade too early, and who were not able to prepare themselves to

³⁵ See, for a critique of the standard view that trade will lead to poverty alleviation through a 'trickle-down' effect, Sanjay G. Reddy and Howard L.M. Nye, 'Making Trade Policy Work for the Poor: Shifting From Dogma to Detail', August 2002, available at : papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID944616_ code514320.pdf?abstractid=944616&mirid=1; For the standard view, see David Dollar and Aart Kraay. "Growth is Good for the Poor", World Bank, Washington DC, 2000.

³⁶ Joseph E. Stiglitz, Making Globalization Work, W.W. Norton & Co., New York, 2006, p. 63. And see also, reiterating this point, Joseph E. Stiglitz and Andrew Charlton, Fair Trade for All. How Trade Can Promote Development, Oxford Univ. Press, Oxford, 2005, rev. ed. 2007, pp. 28-29.

³⁷ See Ha-Joon Chang, Kicking away the Ladder: Development Strategy in Historical Perspective, London, Anthem Press, 2002.

³⁸ Eduardo Galeano, *Las venas abiertas de América Latina*, Xxi Siglo Veintuno De Espana, 1971.

international competition behind trade barriers.³⁹ Yet, we seem to insist on building international trade on a wrong premiss: on a fictitious Ricardian world, in which all values are reduced to labor and in which neither qualitative differences between various kinds of production nor the dynamic perspective are integrated. It is therefore a profound mistake to search a solution in more specialization into the production of commodities with the least added-value, rather than in providing developing countries an ability to diversify into various lines of production. This basic point is missed by those who insist that the real problem is that trade is currently distorted in the sector which matters most to developing countries – agriculture – and that the solution is therefore to remove these distortions.

6.1.2. The Incentive to Specialize in Export Crops and the Resulting Dependency

Because comparative advantage is constructed rather than determined by natural factors, it is crucial to ask which incentives result for States, in the construction of their comparative advantage, from the opening of international trade. States may of course seek to improve the ability of their producers to benefit from the opportunities of international trade, and particularly, for developing countries, from better access to the high-value markets of industrialized countries. At the same time, States may find that importing certain goods, such as processed foods, may be cheaper than producing them locally, and they may therefore increase their dependence on imports for feeding their population. Specialization according to comparative advantage thus leads to two forms of dependency: first, for the acquisition of foreign currency, on the value of exports; second, for the ability of countries to feed their population, on the price of imports.

The example of Sub-Saharan African countries is illustrative. Due in part to the highly penalizing structure of tariffs in OECD countries through tariff peaks and tariff escalation, and in part, to the presence on international markets of highly subsidized foods produced in industrial countries, sub-Saharan Africa has remained dependent on traditional non-fuel primary commodity exports such as coffee, cotton, cocoa, tobacco, tea and sugar, and was essentially unable to develop into an exporter of processed food: South Africa, the largest African exporter of processed food, had a global market share of only 1 percent in the period 2000-2005. At the same time, while many African countries were net food-exporting countries until the 1970s, they have become for the most part net food-importing countries since the 1980s. As we have seen, this was due partly to the lack of investment in agriculture, and partly to the agricultural subsidies in developed market economies, which itself in turn discouraged agricultural investment. The result is well known: it has led to increased vulnerability of these

While many African countries were net food-exporting countries until the 1970s, they have become for the most part net food-importing countries since the 1980s.

³⁹ See in particular Erik S. Reinert, *How Rich Countries Got Rich and Why Poor Countries Stay Poor*, Constable, London, 2007; Ha-Joon Chang, Kicking Away the Ladder, cited above. Globalization has benefited the countries – such as, for example, Brazil, China, South Corea or India – which carefully sequenced trade liberalization, and which built an industry and a services sector behind trade barriers before opening up to trade. See also Joseph E. Stiglitz and Andrew Charlton, *Fair Trade for All. How Trade Can Promote Development*, cited above, p. 17 ('To date, not one successful developing country has pursued a purely free market approach to development. In this context it is inappropriate for the world trading system to be implementing rules which circumscribe the ability of developing countries to use both trade and industry policies to promote industrialization').

⁴⁰ OECD, Business for Development 2008, Promoting Commercial Agriculture in Africa. A development Centre Perspective, Paris, 2008.

⁴¹ UNCTAD, The Changing face of commodities in the twenty-first century. TD/428. Note prepared by the UNCTAD secretariat, UNCTAD XII, Accra, Ghana, 20–25 April 2008.

countries both to worsening terms of trade and to fluctuations in commodity prices – fluctuations which are particularly important in the agricultural sector due to the sensitivity of this sector to weather-related events and the low elasticity of both supply and demand –. More precisely, the dependency on international trade may lead to three consequences: to loss of export revenues when the prices of export commodities go down; to threats to local producers when cheap imports arrive on the domestic markets, against which these producers are unable to compete; and to balance of payments problems for the net food-importing countries when the prices of food commodities go up. The WTO agreements sought to address the latter two problems; since the phasing out of the commodity stabilization agreements of the 1960s and 1970s, the first problem has been addressed not at all.

Volatility can be lessened by spreading the supply and demand across a larger number of producers and consumers. The volatility of prices on the international markets of commodities makes States which are most dependent on international trade most vulnerable to shocks, such as overproduction or harvest failures in other States, leading to brutal price drops or increases in prices. And indeed, due to the dependence of agriculture on weather-related events and to the low elasticity both of supply and of demand, it is considered that the prices of agricultural commodities are particularly volatile. Is more trade liberalization an answer? In general, volatility can be lessened by spreading the supply and demand across a larger number of producers and consumers – the thinner the market, the more important there is a risk that sudden increases or decreases of prices will occur as the result of a few important producers not serving the market or oversupplying it. That, in general, is seen as a strong argument in favor of the development of international markets in agricultural commodities; it is one lesson which many international agencies have drawn from the impact of export restrictions imposed during the spring of 2008 by some major exporters of rice, for instance.

But this reasoning is premised on the idea that shifts in production (towards significantly lower levels or instead higher levels) are attributable primarily to exogenous factors - for example, to weather-related events, so that the bad harvests in one country will be compensated by higher production in another, resulting in an insurance effect for the buyers of the product concerned. In fact however, the levels of production of agricultural commodities are mainly dependent on choices made by the producers: the factors explaining shifts in production are endogenous for a large part, and not merely exogenous. As is well known, these choices are made during the planting season, four to six months before the harvests, on the basis of the expectations made by producers, at that moment in time, about the prices they will receive. This results in what has been called the 'cobweb effect': the producers plant more of the crops whose prices are highest during the planting season, and they plant comparatively less of the crops whose prices are low. This results in a structural volatility, since high prices are an incentive to overproduce (thus leading to lower prices), while low prices are an incentive to produce less (leading to higher prices). The important point is that, in the absence of supply management schemes - i.e., if producers simply seek to respond to the price signals -, all producers, wherever they are located, shall behave according to the same predictions. In this case, far from neutralizing each others' failures to produce enough or overproduction, all the actions converge: since price signals are the same for all producers once markets are globalized, the reactions of all suppliers go in the same direction. The lack of insulation of domestic markets from the prices of international markets thus leads to more instability, not less. Hoarding practices by private traders or by public bodies can further worsen this volatility, as was clearly illustrated between February and April 2008 in rice, for instance.

In the future, more attention should be paid to the need to develop tools to limit this volatility, which results in shocks which, for many developing countries, are particularly difficult to cope with. The fundamental issue however, is the dependency of countries on food imports for the food security of their population, and the impacts this can have on the right to adequate food. In order to assess these impacts, we must compare two opposite scenarios, one in which the prices of food commodities on international markets are low (the slump scenario) – and this has been the historical tendency –, and another in which the prices increase suddenly (the boost scenario).

In the slump scenario, oversupply on international markets, particularly by heavily subsidized producers from OECD countries, leads to a decrease in prices on international markets. In the absence of strong tariff protections, this results in import surges which may threaten the ability for the local producers in net foodimporting countries to live from their crops, when such import surges lead to such low prices on the domestic markets that they are driven out of business. Such surges have been a frequent occurrence, both before and after the entry into force of the Agreement on Agriculture. 12000 cases of import surges were documented in a survey covering 102 developing countries over the period 1980-2003. The FAO concluded that, using the definitions contained in Article 5 AoA, the frequency of import surges exceeded 20% (i.e., one every five years) for all basic food commodities, with particularly high frequencies for rice (40.1%), sugar (40.4%), palm oil (36.6%), cheese (36.4%) and wheat (35.9%). These frequencies have increased for most commodities in the post-1994 period, except for wheat, rice, maize and palm oil. The countries most affected were India and Bangladesh in Asia, Zimbabwe, Kenya, Nigeria, Ghana and Malawi in Africa, and Ecuador and

Such import surges threaten the livelihoods of farmers and agricultural laborers living off these crops. ⁴³ For instance, in Ghana, rice imports increased from 250,000 tons in 1998 to 415,150 tons in 2003. Domestic rice, which had accounted for 43 percent of the domestic market in 2000, captured only 29 percent of the domestic market in 2003. As a result, 66 percent of rice producers recorded negative returns. ⁴⁴ In the same country, tomato paste imports increased by 650 percent from 3,300 tons in 1998 to 24,740 tons in 2003, a significant proportion (36%)

Honduras in Latin America. 42

The fundamental issue however, is the dependency of countries on food imports for the food security of their population.

⁴² FAO Brief on Import Surges – Issues, available on ftp://ftp.fao.org/docrep/fao/009/j8675e/j8675e00.pdf (consulted on 15 November 2008).

⁴³ See, for a series of case studies, the FAO Briefs on Import Surges, http://www.fao.org/es/esc/en/378/406/index.html. (consulted on 15 November 2008). See also Ramesh Sharma, Overview of reported cases of import surges from the standpoint of the analytical content, FAO Import Surge Project Working Paper No. 1, Commodities and Trade Division, FAO, Rome, 2005, http://www.fao.org/es/esc/en/99982/110594/highlight_108226en.html.

⁴⁴ See also A. Paasch (ed) et al., *Trade Policies & Hunger. The impact of trade liberalisation on the Right to Food of rice farming communities in Ghana, Honduras and Indonesia,* FIAN and the Ecumenical Advocacy Alliance, October 2007.

coming from Italy. Local producers – which are mostly smallscale farmers, suffering from a lack of competitiveness and investment – lost 35 percent of the share of the domestic market. In Cameroon, poultry imports increased nearly 300 percent between 1999 and 2004. Some 92 percent of poultry farmers dropped out of the sector. 110,000 rural jobs were lost each year from 1994 to 2003. In Cote d'Ivoire, poultry imports increased 650 percent between 2001 and 2003, causing domestic production to fall by 23 percent. The falling prices forced 1,500 producers to cease production and led to the loss of 15,000 jobs. In Mozambique, vegetable oil imports (palm, soy and sunflower) saw a fivefold increase between 2000 and 2004, as local production was unable to supply the rapidly increasing local demand. In a context of declining prices, with the domestically refined oils following the price movements of imported refined oil, the margins of local producers shrank drastically, leading to plant closings and to an overall reduction of the volumes of locally produced oil.

Import surges experienced by developing countries are the result of the lowering of import tariff barriers at levels significantly below the tariffs bound under the AoA.

These import surges experienced by developing countries are the result of the lowering of import tariff barriers at levels significantly below the tariffs bound under the AoA, which these countries consented to as part of the structural adjustment programs imposed on them as a conditionality to receive loans. Combined with the declining prices on the international markets, partly attributable to subsidies provided to their agricultural producers by OECD countries and the resulting overproduction, this led to the arrival of cheap commodities on domestic markets which the local producers in developing countries were unable to compete with. The supply-side constraints facing these producers vary from country to country, but they include low productivity due to reliance on low agricultural technology, lack of access to credit and agricultural inputs, lack of training and technical assistance, and lack of rural infrastructural services. While these constraints could be partly removed by increased investments in agriculture and public policies supporting farmers, this represents a medium- to long-term perspective which does not constitute a response, in the short term, to the inability of farmers affected to increase supply in response to demand, and to improve their competitiveness in the face of competition from imports.

The provisions contained in the current version of the AoA are insufficient to allow countries to react to the disruptions caused by import surges.

The provisions contained in the current version of the AoA are insufficient to allow countries to react to the disruptions caused by import surges. Under the AoA, members which resorted to tariffication of their non-trade barriers may impose 'special safeguard measures' (SSG) in the form of additional tariffs when confronted to import surges of certain products – i.e., imports exceeding a specified trigger level, or whose price falls below a specified trigger price (Art. 5). However, most developing countries did not use tariffication. 39 WTO Members, including 22 developing countries, have reserved the right to resort to the special safeguard option on hundreds of products. The SSG mechanism was triggered by only 10 Members, including 6 developing countries, between 1995 and 2001; and between 1995 and 2004, developing countries triggered the SSG in only 1 percent of the cases in which they could have applied it.⁴⁵ These figures may be compared with the number of import surges experienced by developing countries. As a protection

⁴⁵ See FAO, Trade Policy Briefs on Issues Related to the WTO Negotiations on Agriculture, No. 9 A Special Safeguard Mechanism for Developing Countries, available at: ftp://ftp.fao.org/docrep/fao/008/j5425e/ j5425e01.pdf.

against such surges, the current SSG mechanism is ineffective. Because they did not undertake tariffication, most developing countries could not reserve their right to invoke the SSG. As to those who did reserve that right, only 6 out of 22 did make use of this possibility, either because of their limited capacity to collect data, or because of the complexity of the safeguard process, making it difficult to use.⁴⁶

The right to food is impacted very differently as a result of developing countries' dependency on food imports when, in the 'boost' scenario, prices undergo increases on international markets. In such circumstances, net food-importing countries may undergo balance of payment problems: the difficulties these countries encountered through the period of 2007-2008, when these prices rose significantly, provided a vivid illustration of this risk. The Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries ('Marrakesh Decision'), which is part of the WTO agreements, was intended to provide an answer to such a situation. In this Decision, the members note that, as a result of the reform program, least-developed and net food-importing developing countries (NFIDCs) 'may experience negative effects in terms of the availability of adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions, including short-term difficulties in financing normal levels of commercial imports of basic foodstuffs'. Four response mechanisms are provided. These are: (1) the provision of food aid at a level which is sufficient to continue to provide assistance in meeting the food needs of developing countries; (2) the provision of technical and financial assistance to least-developed and net food-importing developing countries to improve their agricultural productivity and infrastructure; (3) favorable terms for agricultural export credits; and (4) short-term financing facilities benefiting developing countries in order to allow them to maintain normal levels of commercial imports.

But the failure of WTO Members to implement the Marrakesh Decision illustrates vividly how inequitably the WTO Agreements have been followed upon. There exists within the WTO no mechanism to systematically monitor the impact of the AoA reform process on the NFIDCs, which means that only in the most extreme circumstances could any mechanisms established under the Marrakesh Decision be triggered. Truthermore, the notion of 'adequate supplies' of basic foodstuffs—which NFIDCs should be able to obtain from external sources 'on reasonable terms and conditions' throughout the reform process—remains undefined, although it is this notion which should trigger the mechanisms provided for under the Decision. Finally, there are major difficulties with each of the four mechanisms which the Marrakesh Decision establishes:

(1) The Marrakesh Decision refers to the need to review the level of food aid established periodically by the Committee on Food Aid under the Food Aid Convention 1986 and to 'initiate negotiations in the appropriate forum to establish a

The failure of WTO Members to implement the Marrakesh Decision illustrates vividly how inequitably the WTO Agreements have been followed upon.

⁴⁶ See South Centre, Controversial Points in the Discussion on Special Safeguard Mechanism (SSM) in the Doha Round, Analytical Note SC/AN/TDP/AG/7, November 2008.

⁴⁷ UNCTAD, Impact of the Reform Process in Agriculture on LDCs and Net Food-Importing Developing Countries and Ways to Address Their Concerns in Multilateral Trade Negotiations, UN Doc. TD/B/COM.1/EM.11/2 and Corr.1 of 23 June 2000, paras. 25 and ff.

level of food aid commitments sufficient to meet the legitimate needs of developing countries during the reform programme'. The 1995 and 1999 Food Aid Conventions (FACs), revising the initial FAC of 1967,48 were a result of this proclaimed objective. The Marrakesh Decision also included a commitment to 'adopt guidelines to ensure that an increasing proportion of basic foodstuffs is provided to least-developed and net food-importing developing countries in fully grant form and/or on appropriate concessional terms in line with Article IV of the Food Aid Convention 1986'. However, Article VII (a) of the Food Aid Convention provides that food aid under the Convention may be provided to least-developed countries and low-income countries, as well as to 'lower middle-income countries, and other countries included in the WTO list of Net Food-Importing Developing Countries at the time of negotiation of this Convention, when experiencing food emergencies or internationally recognised financial crises leading to food shortage emergencies, or when food aid operations are targeted on vulnerable groups'. Thus, as regards the NFIDCs which are neither LDCs nor low income countries, more restrictive conditions are stipulated under the FAC than would be required in order to ensure an adequate implementation of the Marrakesh Decision.⁴⁹ The FAC could be amended in order to put an end to this discrepancy. In addition, the guidelines referred to in the Marrakesh Decision could be adopted, in order to impose an obligation on the States parties to the FAC to provide food aid at levels which ensure that NFIDCs will at all times be able to ensure an adequate protection of the right to food under their jurisdiction.

- (2) The provision of assistance to LDCs and NFIDCs in order to allow them to improve their agricultural productivity and infrastructure has been insufficient over the last two decades. As we have seen, both the proportion of official development assistance dedicated to agriculture and the proportion of national budgets going to agriculture have declined significantly since the early 1980s. While commitments have been made in various fora to reverse this trend, it remains to be seen whether there will be sufficient political will to implement these resolutions.
- (3) The Marrakesh Decision provides that appropriate provision should be made in any agreement on agricultural export credits for differential treatment of LDCs and NFIDCs. For the moment, the shares of these countries in total agricultural exports remain small. Yet, little progress has been achieved on this point.
- (4) Para. 5 of the Marrakesh Decision provides for the possibility for NFIDCs experiencing balance of payment difficulties to draw on 'existing facilities, or such facilities as may be established' in order to enable them to address their financing difficulties. The main facility which has been considered to satisfy this requirement is the IMF Compensatory Financing Facility (CFF), initially established in 1963. The CFF was expanded in 1981 to cover excess cereal import costs, following requests of the World Food Council and the FAO, and in consideration of the high

⁴⁸ The Food Aid Convention was initially adopted in 1967 as one component of the International Grains Agreement. It is specific in that it contains commitments by its States parties to provide certain quantities of food as food aid. The parties to the Food Aid Convention are Argentina, Australia, Canada, Japan, Norway, Switzerland, and the United States, as well as the European Community and its member States. The present version of the FAC entered into force on 1 July 1999.

⁴⁹ The countries concerned are Barbados, Mauritius, St. Lucia, Trinidad and Tobago.

volatility of food prices in the 1970s. In fact however, this facility has been of little usefulness to NFIDCs.⁵⁰ Access to the CFF is restricted to countries experiencing temporary balance of payments difficulties linked to factors largely beyond the control of the authorities, such as a rise in cereal import costs. But this is a condition which very few countries have been considered to meet. In addition, access to loans is subject to conditionality, which the Marrakesh Decision recognizes explicitly by referring to facilities extended 'in the context of adjustment programmes'. Finally, here too, there is a discrepancy between the CFF and the Marrakesh Decision: the CFF is limited to cereals only, whereas the Decision covers all basic foods.

On 25 April 2001, a group of 16 developing country Members of the WTO submitted a proposal which called for, inter alia, the establishment of an Inter-Agency Revolving Fund (RF)51 under which, in addition to technical and financial assistance to LDCs and NFIDCs for specific projects linked to improving agricultural productivity and related infrastructure, financing would be provided at concessional terms without requiring any justification other than evidence that import bills were excessive. This system was conceived as self-financing: borrowing countries would assume the obligation to repay their loans, for instance within a period of two years. The UNCTAD later elaborated on this proposal, which was included by the WTO Doha Ministerial Conference among the implementation issues⁵² and led to an Inter-Agency Panel being established to examine the issue.⁵³ No follow-up was given, at yet, to the proposal for a revolving fund. It t is therefore to be welcomed that the Exogenous Shocks Facility (ESF) has been revised in September 2008 in order to allow the IMF to help its members cope with events such as commodity price changes, by including a rapid-access component in the facility and be providing concessional terms of financing, focused on the adjustment to the underlying shock but with less emphasis than previously on broader structural adjustments.

In 2001, a group of 16 developing country Members of the WTO submitted a proposal which called for the establishment of an Inter-Agency Revolving Fund.

6.2. The Micro-Economic Impacts of Trade Liberalization: the Impact on the Shape of the Global Food Supply Chain and the Dualization of the Farming Sector

Increased cross-border trade in agricultural products implies that, as the production of food is reorientated towards serving the foreign markets rather than the domestic markets, the role of transnational corporations – commodity traders, food processors, and global retailers – increases. These corporations serve an indispensable function in linking producers, particularly from developing countries, to markets, particularly to the high-value markets of industrialized countries. But

Increased cross-border trade in agricultural products implies that the role of transnational corporations increases.

⁵⁰ It is significant that, in order to assist countries to face the balance of payments difficulties in 2008 as a result of the brutal increases in prices of food commodities on international markets, the International Monetary Fund provided additional balance of payments support by augmented access to 12 countries under Poverty Reduction Growth Facility (PRGF) arrangements.

⁵¹ Proposal to Implement the Marrakesh Ministerial Decision in Favour of LDCs and NFIDCS, G/AG/W/49, 19 March 2001, and Add.1 (23 May 2001), and Add.1/Corr.1 (27 June 2001).

⁵² Decision on Implementation-Related Issues and Concerns, WTO Doc. WT/MIN(01)/17 of 20 November 2001, para. 2.2.

⁵³ Inter-Agency Panel on Short-Term Difficulties in Financing Normal Levels of Commercial Imports of Basic Foodstuffs, Report of the Inter-Agency Panel, WTO Doc. WT/GC/62 G/AG/13 of 28 June 2002.

since these corporations have activities in different countries and can choose the country from which they source, they may be difficult to regulate, particularly as regards their buying policies. This constitutes a source of dependency for the farmers who supply them. And it encourages the segmentation of the farming sector, increasingly divided between one segment which has access to high-value markets and, as result, to the best technologies, inputs (including land, water, and state support), credit, and political influence, and another segment which is left to serve only the low-value, domestic markets, and is comparatively neglected and marginalized.

An increasing portion of the end value of agricultural products goes to the large transnational corporations in the agrifood system. Concentration in the food system is significant. This results in widening the spread between world and domestic prices in commodity prices for wheat, rice, and sugar, for instance, which more than doubled between 1974 and 1994; and, since most large commodity buyers are based in the OECD countries, this limits the portion of the value captured by developing countries. In other terms: an increasing portion of the end value of agricultural products goes to the large transnational corporations in the agrifood system - commodity buyers, food processors, and retailers – who now have come to occupy a dominant position as a result of concentration at different segments of the chain. In its World Development Report 2008, the World Bank highlights high concentration rates in coffee, tea, and cocoa: 'Coffee is produced by an estimated 25 million farmers and farm workers, yet international traders have a CR4 of 40 percent, and coffee roasters have a CR4 [the share of market of the 4 dominant actors] of 45 percent. There are an estimated 500 million consumers. The share of the retail price retained by coffeeproducing countries - Brazil, Colombia, Indonesia, and Vietnam account for 64 percent of global production - declined from a third in the early 1990s to 10 percent in 2002 while the value of retail sales doubled. Similar concentrations are observed in the tea value chain where three companies control more than 80 percent of the world market. Cocoa has a CR4 of 40 percent for international traders, 51 percent for cocoa grinders, and 50 percent for confectionary manufacturers. Developing countries' claim on value added declined from around 60 percent in 1970-72 to around 28 percent in 1998-2000'.54 Farmers in industrialized countries face the same constraints, resulting from the need to go through commodity traders which a have a dominant position: two companies control 40 percent of the grain exports from the United States.⁵⁵ Similar trends towards increased concentration occur in the retail sector,⁵⁶ although the speed of concentration here seems to have decreased in recent years.⁵⁷

The results of the expansion of global supply chains are ambiguous. On the one hand, this creates opportunities, by giving farmers from developing countries access to high-value markets, particularly where these farmers have certain com-

⁵⁴ At p. 136.

⁵⁵ Sophia Murphy, 'Concentrated Market Power and Agricultural Trade', EcoFair Trade Dialogue Discussion Papers, 14 (Aug. 2006).

⁵⁶ See Special Feature: Globalization, Urbanization and Changing Food Systems in Developing Countries, FAO (2004) (reporting that FDI in food industries increased from \$743 million to more than \$2.1 billion from 1988 to 1997, far outpacing agricultural investments, and noting that the 30 largest supermarket chains now account for about one third of food sales worldwide); or, for example, 'Horticultural Producers and Supermarket Development in Indonesia', World Bank Report No. 38543-ID at vi and vii (2007) (noting that traditional retail loses about 2 percent of its share each year in Indonesia).

⁵⁷ Tim Reardon and Ashok Gulati, *The Rise of Supermarkets and Their Development Implications: International Experience Relevant for India* IFPRI Discussion Paper 00752, 17 (2008).

parative advantages such as lower land and labor costs and longer growing seasons, and where they are relatively close to those markets – as are Sub-Saharan producers to European markets. On the other hand however, global sourcing increases the number of suppliers and, thus, the competition between them, leading to pricing policies by buyers which reduce the share of the final value of the product which goes to the producers – the farm gate price, as opposed to the retail price. Given the increased concentration of market power in the agricultural commodities system, in the hands of commodity buyers and large retailers, these actors impose their prices on producers; they impose standards which many smallscale farmers are unable to meet; particularly for crops like wheat or soybean, for which economies of scale represent important productivity gains, small-scale farmers are unable to compete, and they are relegated to the low-value, local markets, which puts them at a strong disadvantage in the competition for land, water, or other productive resources, unless they end up working as badly paid agricultural laborers.

Certain strategies could be developed to avoid smallscale farmers being squeezed out by the development of global supply chains: they include cooperatives, outgrower schemes, public-private initiatives and regional initiatives.⁵⁸ However, these strategies are sometimes ambiguous in their effects. For instance, outgrower schemes and contract farming may be a means to shift the risks to the independent producer, since that producer is not guaranteed a stable income and will have to cope with severe losses, for instance, if the harvests fail, or if the prices undergo sudden decreases. In addition, these strategies aiming at integrating smallscale farmers into global supply schemes are still underdeveloped and clearly not sufficient, at present, to counteract the trend towards more concentration and increased dualization of the farming sector. This is particularly the case since large buyers seek to minimize transactions costs, which are high when they seek to source from smallscale farmers who are dispersed geographically and are far removed from centralized collection facilities. In addition, large agricultural producers are better equipped to adapt to shifting demand and to comply with volume and traceability requirements, as well as with environmental and food safety standards which global retailers increasingly seek to monitor compliance with.59

It has been written about the global food system that 'it has a dualistic structure. The vast majority of farms (85 percent) remain operations of less than two hectares. But the 0.5 percent of farms that exceed 100 hectares capture a disproportionate share of global farm income, enjoy privilege access to policy makers and, particularly in developed countries, receive generous subsidies. Outside of farming, buying power is increasingly concentrated in the hands of supermarkets and other powerful corporate actors. Preferences of affluent consumers in high- and middle-income countries are shaping global food and agricultural systems, offering smallholders opportunities and niche markets. However, they may face diffi-

Certain strategies could be developed to avoid smallscale farmers being squeezed out by the development of global supply chains.

⁵⁸ See, highlighting the measures which could facilitate cooperation between supermarkets and smallholder farmers, Oli Brown & Christina Sander, 'Supermarket Buying Power: Global Supply Chains and Smallholder Farmers', *International Institute for Sustainable Development* 11 (March 2007).

⁵⁹ C. Dolan & J. Humphrey, (2001) 'Governance and Trade in Fresh Vegetables: The Impact of UK Supermarkets on the African Horticultural Industry', *Journal of Development Studies* 37(2) (2001), p. 175.

culties in being able to produce up to the standards of the buying agents'.⁶⁰ Far from counteracting this, the expansion of global supply chains will reinforce this unequal structure, and increase the gap between these different worlds of farming.

6.3. The Non-Economic Impacts of Trade Liberalization: Environmental and Health Dimensions

Reliance on international trade in order to achieve food security cannot ignore its impact on the environment and on nutrition. Climate change constitutes the single most important threat to the future ability of the planet to feed its population.

Reliance on international trade in order to achieve food security cannot ignore its impact on the environment and on nutrition. Until recently, these elements were mostly ignored in discussions on international trade. They are nevertheless crucial. As recalled above, climate change constitutes the single most important threat to the future ability of the planet to feed its population: any measure which contributes to further global warming should be therefore avoided. And the right to food cannot be equated with a sufficient daily of calories intake: it is a right to adequate food, which requires that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity, requiring from States that they maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns. 61

6.3.1. Environmental Dimensions

The lowering of barriers to international trade leads to increased competition between producers located in different countries, each with their own policies aimed at controlling emissions of greenhouse gases (GHG) and the depletion of soils, particularly through the use of chemical fertilizers. This leads to the fear that investors and buyers may turn to jurisdictions which impose fewer constraints, and whose producers are therefore put at a competitive advantage. While this concern has been mainly expressed as regards industries relocating, it may also be relevant to agricultural production, since agriculture produces significant effects on climate change, not only through the production and release of greenhouse gases such as carbon dioxide, methane, and nitrous oxide, but also by altering the earth's land cover: land use change such as deforestation and desertification is a major anthropogenic source of carbon dioxide. For the moment, however, there seems to be no evidence that countries are discouraged from imposing restrictions on agricultural practices, with a view to limiting their GHG effects or their impact on soils, because of the potential impact of such restrictions on the productivity of their producers.

Agriculture produces significant effects on climate change, not only through the production and release of greenhouse gases, but also by altering the earth's land cover.

About three quarters of the energy consumption in the food system takes place beyond the farm gate. But there is more to the relationship between trade liberalization and the environment. Long production chains imply long distances in transport. It has been stated that 'about three quarters of the energy consumption in the food system takes place beyond the farm gate, and energy used to transport foods to rich country markets from around the globe, 365 days a year, regardless of seasons, accounts for a significant part of total energy consumption in the food system'.⁶²

⁶⁰ Marc J. Cohen et al., 'Impact of Climate Change and Bioenergy on Nutrition', IFPRI and FAO, 2008, p. 3.

⁶¹ E/C.12/1999/5, para. 9.

⁶² W. Sachs and T. Santarius, Slow Trade - Sound Farming, p. 24.

General conclusions are difficult to draw, since the impact of the transportation of food over long distances, as encouraged by the globalization of supply chains, depends on the mode of transportation used, and may be offset to some extent if food imported to an area has been produced in an environmentally more sustainable way than the food available locally. For example, a case study showed that it can be more sustainable (at least in energy efficiency terms) to import tomatoes from Spain than to produce them in heated greenhouses in the United Kingdom outside the summer months.⁶³ What is clear however is that road transport and air transport (representing respectively 74 percent and 12 percent of the GHG emissions produced by transport, which itself is responsible for 23 percent of the world energy-related GHG emissions), 64 which are typically used for the transport of fresh food, have a serious impact on climate change. This impact is increasing as consumers are encouraged to expect all foods to be available, at all times of the year, without regard for the seasons. A study done on the 'food miles' of food consumed in the United Kingdom for instance highlighted that air freight is the fastest growing mode of food transport, accounting for 11 per cent of the food industry's transport emissions despite only carrying 1 per cent of the food and making up just 0.1 per cent of the food miles. 65 Such modes of food consumption are not sustainable in the long term.

Most importantly, the various modes of agricultural production may have widely different impacts on global warming. If clearing forest to create farmland is included, agriculture is estimated to be responsible for about 32 percent of total global man-made emissions of GHGs. 66 The conversion of tropical forests to agricultural land, the expansion of rice and livestock production (31 percent) and the increased use of nitrogen fertilizers (38 percent) have all been significant contributors to GHG emissions, in the form of methane and nitrous oxide. While both of these gases are released in much smaller quantities than carbon dioxide, they have a much greater global warming potential: one ton of nitrous oxide or methane have a far greater impact on climate change than a ton of carbon dioxide.⁶⁷ While the progressive switch to more intensive forms of agricultural production, with the attendant environmental impacts and negative consequences for global warming, cannot be attributed directly to the increase of global trade in agricultural commodities, this is nevertheless a trend which is encouraged by the specialization of countries in cash crops for exports. The future regulation of international trade in agricultural commodities should take into account the impact of various modes of agricultural production on climate change, in order to allow countries to provide incentives in favor of forms of production which better respect the environment. Agro-industrial forms of agricultural production are also unsustainable because of their dependence on cheap oil. Reversing the trend towards a generalization of these forms of production is important if we aim at food security, considering the threat of climate change on our ability to maintain current levels of agricultural productivity in many regions. 68

⁶³ Id., p. v.

⁶⁴ These are figures from the International Energy Agency for 2004.

⁶⁵ The Validity of Food Miles as an Indicator of Sustainable Development: Final report, DEFRA, July 2005, p. ii

⁶⁶ World Agriculture towards 2015, FAO, 2003, http://www.fao.org/docrep/005/Y4252E/y4252e00.HTM.

⁶⁷ Friends of the Earth, Food and Climate Change – Briefing, October 2007, see www.foe.co.uk/resource/briefings/food_climate_change.pdf (last consulted on November 15th, 2008).

⁶⁸ See in particular David B. Lobell et al., 'Prioritizing Climate Change Adaptation Needs for Food Security in 2030', cited above.

It is vital for food security in the future that we protect crop genetic diversity.

Most of mankind now lives off no more than 12 plant species.

Finally, it is vital for food security in the future that we protect crop genetic diversity. For thousands of years, reasonable levels of production were achieved thanks to the management by farming communities of a vast portfolio of genetic diversity. Stability in the level of protection was achieved thanks to the coexistence of an array of plants, presenting different traits making them resistant to specific diseases, to drought, or to variations in temperature. This crop genetic diversity is now under severe threat: as a result of the pressure towards more uniform crops, all efforts have been put into the development of a limited number of standard, high-yielding varieties, so that barely more than 150 species are now cultivated; most of mankind now lives off no more than 12 plant species.⁶⁹

This is an extremely worrying prospect. Genetic erosion increases our vulnerability to sudden changes in climate, and to the appearance of new pests and diseases. For example, after the fungus *Helminthosporium maydis* destroyed much of the standing maize crop in the southern part of the United States in 1970, leading to losses to consumers and farmers totaling some 2 billion USD, ⁷⁰ it was necessary to breed a variety resistant to this pest by using genetic resources borrowed from other parts of the world. A number of varieties have been ignored for long periods of time due to their negative agricultural characteristics, before it was found that they could contribute to agricultural developments due to their specific traits such as their resistance to certain pests or, for example, their higher nitrogen-fixing capacities. Preserving those varieties is thus vital. It is noteworthy however that the emphasis put on the production of cash crops for exports, a result of greater opportunities created by international trade, encourages the development of homogenization in agriculture, and a substitution of monocropping to polycropping.

The relationship between trade and environment has recently been examined in a joint report of the WTO and the UNEP.

The relationship between trade and environment has recently been examined in a joint report of the WTO and the UNEP.⁷¹ The report essentially concludes that international trade and the adoption of mitigation measures to combat climate change can be mutually supportive. Increased international trade would facilitate the transfer of clean technologies, the report notes; and trade opening would lead to rising incomes, thus leading both the populations benefiting and the rich countries to demand higher environmental standards including ones on greenhouse gas emissions. These conclusions remain debatable. In fact, one of the main obstacles to transfers of clean technologies is the insistence of certain WTO members, among the industrialized countries, on full compliance with the TRIPS Agreement, also as regards such technologies. And the assertion that the lowering of barriers to international trade and more global supply chains increases incomes depends on the population group concerned: the evidence is overwhelming that it does not do so per necessity and that, on the contrary, inequalities may grow as a result of the opening of trade. More importantly, what the report essentially

⁶⁹ José Esquinas-Alcázar, "Protection crop genetic diversity for food security: political, ethical and technical challenges", *Nature*, December 2005, vol. 6, pp. 946-953. See also P.C. Mangelsdorf, "Genetic potentials for increasing yields of food crops and animals", *Proc. National Academy of Sciences U.S.A.*, vol. 56 (1966), pp. 370-375.

⁷⁰ J. Kloppenburg, First the Seed: The Political Economy of Plant Biotechnology, Cambridge, Cambridge Univ. Press, 1988, p. 93.

⁷¹ WTO-UNEP Report, *Trade and Climate Change*, Geneva, 2009. This report appeared after the present paper was finalized in draft form. It has thus not been possible to use it to a greater extent, as it would certainly have been desirable.

omits is any discussion of the impact of the development of exports on farming practices. The However, it is clear that different types of farming have different levels of emission of GHG, and in most cases, export-led agriculture has also been the most damaging to the environment, due to its high levels of mechanization and its intensive use of external, petroleum-based inputs.

6.3.2. Nutrition and Health Dimensions

Partly as a result of tariff escalation in developed countries and partly as a result of comparative advantage, developing countries mostly export commodities, including fresh fruit and vegetables, and they import processed foods from developed countries. This has led to shifts in dietary habits in developing countries, whose populations increasingly consume 'Western' diets rich in salt, sugar, and fat. Higher rates of obesity resulted, as well as diseases such as heart disease and type 2 diabetes. Overweight is now 'among the top five risk factors for loss of disability-adjusted life years (DALYs) in both developed countries and low-mortality developing countries (although underweight still ranks higher)'. Urbanization and increased employment of women, which leads to heavier reliance on foods prepared outside the home, including foods available from supermarkets, have played a significant role in this evolution; but reliance on imported foods has also been a factor, which governments should take into account in their trade policy decisions.

6.4. Conclusion

The impacts listed above cannot be attributed to the implementation of the WTO Agreement on Agriculture considered in isolation. Indeed, many of these impacts can be mitigated even within the framework set by the AoA. But neither can it be ignored that the WTO Agreements are implemented in a specific context, which is such that developing countries all too often have been unable to gain from the opportunities these agreements created, while having had to suffer the consequences from trade liberalization on their economies. And the pillars of the AoA - improved market access, and reduction of domestic support and export subsidies - are not matched by corresponding obligations imposed on States to act cooperatively to limit volatility of prices of commodities on international markets, to put in place safety nets and redistributive social policies in order to compensate those who lose out as a result of trade liberalization, to regulate the commercial practices of transnational corporations along the global food supply chain, or to take into account environmental and health dimensions in their trade policies. It is this mismatch which is at the source of the concerns raised by trade liberalization: governments should pay as much attention to the need to develop trade sustainably, as they do to remove existing distortions to trade.

Governments should pay as much attention to the need to develop trade sustainably, as they do to remove existing distortions to trade.

⁷² While the report does refer at length to agriculture, it essentially focuses on the threat climate change represents to agricultural productivity, on the need for countries where agriculture will suffer most to import more food, and on the benefit from importing new technologies. See pp. 19–20.

⁷³ Karen Rideout, 'Food and Trade – An Ecological Public Health Perspective', Oxfam Canada, 27 February 2005, p. 12 (referring to Chopra M, Galbraith S, Darnton-Hill I. A global response to a global problem: the epidemic of overnutrition. Bulletin of the World Health Organization 80 (2002):952–958).

States should strengthen their own agricultural sector, and thereby allow the poorest segment of the population to benefit from an increased income. A double-track strategy may therefore be recommended. First, States should strengthen their own agricultural sector, and thereby allow the poorest segment of the population to benefit from an increased income and additional source of employment. In the long term, due to the unavoidable rise of transport costs, there is no other way to achieve sustainable food security. That is not to say that there is no role for international trade, particularly for tropical products which can only be produced under certain climates. But where global supply chains do develop, they should work for the benefit of those who, today, are most food insecure, and they should be made more environmentally sustainable. This will not happen by chance; it can only happen by design. This should form a second part of the strategy: to the extent more trade is encouraged for certain products where it is justified, this should be accompanied by measures aimed at ensuring that their benefits are maximized, and that the potential negative impacts are minimized.

Reconciling Trade with the Right to Food

7.1. The Challenge of Fragmentation

The previous chapter identified a number of potential impacts of trade liberalization on the ability of States to comply with their obligation towards the human right to adequate food, as required in particular by Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights. Yet, their human rights obligations and the commitments they make through the conclusion of agreements under the WTO framework remain uncoordinated. At international level, this lack of coordination is one example among others of the problem of fragmentation of international law into a number of self-contained regimes, each with their own norms and disputesettlement mechanisms, and relatively autonomous both vis-à-vis each other and vis-à-vis general international law.⁷⁴ All too often, this failure of global governance mechanisms to ensure an adequate coordination between the obligations imposed on States under these different regimes is replicated at domestic level: trade negotiators either are not aware of the human rights obligations of the governments they represent, or they do not identify the implications for their position in trade negotiations⁷⁵; even when they are well informed about the potential intersections, they routinely express the view that any potential incompatibility should be addressed through appropriate policies at domestic level, where the two sets of commitments should be reconciled.

This approach thus leaves it to each State to ensure, in its domestic policies, a consistency which is not sought after in the international legal process. This is not satisfactory. It amounts to treating obligations incurred under trade agreements as equivalent in normative force to human rights obligations. This not only fails to recognize that, both as a result of Article 103 of the UN Charter⁷⁶ and because human rights norms have the status of peremptory norms of international law – no court could recognize as valid and apply a treaty adopted in violation of internationally recognized human rights –, human rights should prevail over any other international commitments. It also creates the risk that, faced with situations of conflict, States will opt for compliance with their obligations under trade agree-

Human rights obligations and commitments under the WTO framework remain uncoordinated.

Human rights should prevail over any other international commitments.

⁷⁴ Report of the Study Group of the International Law Commission, Fragmentation of international law: difficulties arising from the diversification and expansion of international law, U.N. doc. A/CN.4/L.702, 18 July 2006, para. 8; B. Simma, 'Self-contained regimes', Netherlands Yearbook of International Law, vol. 16, 1985, pp. 111–136.

⁷⁵ Only seldom have WTO members referred to the right to food in the context of trade negotiations within the WTO: this was done by Mauritius and Norway (Committee on Agriculture, Special Session, Note on Non-Trade Concerns, WTO Doc. G/AG/NG/W/36/Rev.1, 9 November 2000, paras. 44 and 57; WTO Doc. G/AG/NG/W/101, 16 January 2001, paras. 6 ff.); and by Burkina Faso (WTO Doc. TN/AG/R/10 of 9 September 2003, para. 35).

⁷⁶ As members of the Organization of the United Nations, all States have pledged under Article 56 of the UN Charter to 'take joint and separate action in cooperation with the Organization for the achievement of the purposes' of the Charter, which include 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'. It follows from Article 103 of the Charter that this obligation prevails over any other international agreement.

ments: since these agreements are commonly backed by the threat of economic sanctions – as is the case within the WTO, under the Dispute Settlement Understanding –, setting aside their human rights obligations will appear to governments less costly economically and even, often, politically.

The belief that compatibility between trade law and human rights law is best assured at the level of implementation in national policies also overestimates the ability of domestic political processes to compensate for the fragmentation of international law, at the same time that it underestimates the contribution an enabling international environment can make to the fulfillment of human rights at national level. The imbalance created at international level between trade commitments backed by the threat of economic sanctions, on the one hand, and human rights treaties which are not enforced through similar means, on the other hand, cannot be easily rescued in national political processes: self-determination is illusory when it is exercised in such an incentives structure. Human rights require progressive implementation: apart from their immediate obligations to respect and protect human rights, States must fulfill human rights through measures which may require time to be fully implemented. For the adoption of such measures, States must have a certain policy space available, and they may need resources; certain trade policies adopted in implementation of trade agreements, however, may limit both, without this being always possible to predict in advance.

Commitments under the WTO framework must be interpreted, to the fullest extent possible, so as to be compatible with international law.

One safeguard does exist: commitments under the WTO framework must be interpreted, to the fullest extent possible, so as to be compatible with general international law, as well as with the rules of any treaty applicable in the relationships between the parties to the dispute giving rise to the question of interpretation, as such rules may develop, in particular, through adjudication.⁷⁷ In the system of the WTO, the requirement that the agreements be interpreted in accordance with the

⁷⁴ Report of the Study Group of the International Law Commission, Fragmentation of international law: difficulties arising from the diversification and expansion of international law, U.N. doc. A/CN.4/L.702, 18 July 2006, para. 8; B. Simma, 'Self-contained regimes', Netherlands Yearbook of International Law, vol. 16, 1985, pp. 111–136.

⁷⁵ Only seldom have WTO members referred to the right to food in the context of trade negotiations within the WTO: this was done by Mauritius and Norway (Committee on Agriculture, Special Session, Note on Non-Trade Concerns, WTO Doc. G/AG/NG/W/36/Rev.1, 9 November 2000, paras. 44 and 57; WTO Doc. G/AG/NG/W/101, 16 January 2001, paras. 6 ff.); and by Burkina Faso (WTO Doc. TN/AG/R/10 of 9 September 2003, para. 35).

⁷⁶ As members of the Organization of the United Nations, all States have pledged under Article 56 of the UN Charter to 'take joint and separate action in cooperation with the Organization for the achievement of the purposes' of the Charter, which include 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'. It follows from Article 103 of the Charter that this obligation prevails over any other international agreement.

⁷⁷ The Appellate Body of the WTO takes the view that commitments under the WTO framework cannot be treated 'in clinical isolation' from general international law (Appellate Body Report of 20 May 1996, United States - Standards for Reformulated and Conventional Gasoline (United States v. Brazil and Venezuela), WT/DS2/AB/R). Article 3.2. of the Dispute Settlement Understanding confirms that WTO norms may be 'clarified ... in accordance with customary rules of interpretation of international law', which the Vienna Convention codifies. Article 31, para. 3 (c) of the Vienna Convention on the Law of Treaties stipulates that the interpretation of treaties must take into account 'any relevant rules of international law applicable in the relations between the parties'. The 'relevant rules of international law' referred to by Article 31 para. 3 (c) of the Vienna Convention on the Law of Treaties are not deemed to be static, but may evolve, particularly, as a result of legal interpretation : see Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16 at p. 31, para. 53; Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), I.C.J. Reports 1997, pp. 76-80, paras. 132-147. On the need for an evolutionary interpretation, see Appellate Body Report, 12 October 1998, United States - Import Prohibition of Certain Shrimp and Shrimp Products (United States v. India, Malaysia, Pakistan, Thailand), WT/DS58/AB/R, para. 129.

other international obligations of the Members is further strengthened by the fact that the authoritative interpretation of the agreements lies in the hands of the Members themselves, within the Ministerial Conference or the General Council, 78 and the Members cannot ignore their human rights obligations in providing such interpretations. Yet, this does not provide a satisfactory answer to situations of real conflict which no conform interpretation could avoid. And such a principle of integrity in the interpretation of WTO agreements does not address the 'chilling effect' which the norms established in these agreements may cause, when the Members do not know whether or not any particular measure they take, in order to comply with their human rights obligations, will be considered acceptable by the other Members or instead expose them to retaliation, particularly when they seek to adopt measures which, although not strictly required by human rights treaties, nevertheless would contribute to the progressive realization of human rights.

We therefore must ensure that the human rights obligations of the parties are taken into consideration at the negotiation stage of trade agreements: later may be too late. Unless adequately regulated and carefully sequenced, increased liberalization may lead to further import surges threatening the livelihoods of the local producers in the importing country, or alternatively to sudden increases in the prices of food commodities against which the poorest food buyers are not adequately protected. It may lead to the expansion of global supply chains which will benefit some but may marginalize many others who are already the most vulnerable. It will increase competition between, on the one hand, farmers from OECD countries and well-equipped, highly mechanized farmers from certain developing countries, and on the other hand, farmers in many other developing countries whose productivity per active laborer is one hundred times lower. It may encourage forms of agricultural production, and the lengthening of supply chains, at the risk of further damages to the environment in the form of increased GHG emissions and biodiversity erosion. In a world in which those who are hungry are smallscale farmers and other food producers, including agricultural laborers, as well as urban poor, and in which climate change constitutes the single most important threat to food security in the future, pursuing along the route of trade liberalization while ignoring these potential consequences would be unacceptable. On the basis of the findings made above, the following proposals seek to assist States in better taking into account their human rights obligations in the negotiation and implementation of their commitments under the framework of the WTO. A first set of proposals are procedural in nature: they seek to ensure that trade negotiations are conducted in conditions which facilitate taking into consideration the right to food. A second set of proposals are substantive: they explore solutions to the impacts identified in chapter V. Together, these proposals should promote the right of peoples to democratically determine their own agricultural and food policies, without these choices being dictated by the international trade regime; and they should channel this regime towards one which contributes not only to increased production and allocative efficiency, but also to the realization of the right to food.

Unless adequately regulated and carefully sequenced, increased liberalization will benefit some but may marginalize many.

⁷⁸ See Article IX(2) of the WTO Agreement, also referred to in Article 3.9. DSU. And see C.-D. Ehlermann and L. Ehring, 'The Authoritative Interpretation Under Article IX: 2 of the Agreement Establishing the World Trade Organization: Current Law, Practice and Possible Improvements', Journal of International Economic Law, vol. 8(4), 2005, pp. 814–815.

7.2. The Procedural Dimensions: Guiding Trade Negotiations Towards the Full Realization of the Right to Food

7.2.1. Assessing the Impact of Trade Agreements on the Right to Food

States should not accept undertakings under the WTO framework without ensuring that these commitments are fully compatible with their obligation to respect the right to food.

States should not accept undertakings under the WTO framework without ensuring that these commitments are fully compatible with their obligation to respect the right to food. This requires that they assess the impact on the right to food of these commitments. It also requires that any commitments they make be limited in time, and re-evaluated subsequently, since the impacts of trade liberalization on the ability of States to respect the right to food may be difficult to predict in advance, and may become visible only after a number of years of implementation. For instance, whatever the results of the current round of negotiations launched in Doha in November 2001, these results should be explicitly treated as provisional, and a sunset clause should be appended to the outcome in order to allow for a renegotiation, following a period of a few years of implementation, on the basis of an independent review of the impact on the enjoyment of the right to adequate food. On the enjoyment of the right to adequate food.

Impact assessments can strengthen the position of governments in trade negotiations. Impact assessments are a useful tool in order to help a State understand the implications of the agreements it enters into. They have a powerful democratizing effect, since they should provide an opportunity for civil society to participate in the evaluation of trade policies, and allow national parliaments and civil society organizations to rely on their results in their dialogue with governments. To the extent that impact assessments are based on the normative requirements of the human right to adequate food, and the corresponding indicators, they can strengthen the negotiating position of governments in trade negotiations, particularly since the reference to the right to food is to an obligation imposed on all States under international law, which they cannot ignore in the context of trade negotiations.

Yet, important though as they are, impact assessments remain reactive – or defensive – in nature: they are tools to measure the consequences of the decisions which are taken, but they do not indicate, in and by themselves, which trade policies should be implemented in order to further the realization of the right to

⁷⁹ See Committee on Economic, Social and Cultural Rights, Concluding Observations regarding Ecuador, 7 July 2004, E/C.12/1/Add.100 at para. 56; Committee on the Rights of the Child, Concluding Observations regarding El Salvador, 30 June 2004, CRC/C/15/Add.232 at para. 48/; Committee on the Elimination of Discrimination Against Women, Concluding Observations regarding Colombia, 2 February 2007, CEDAW/C/COL/CO/6, at para. 29; Committee on the Elimination of Discrimination Against Women, Concluding Observations regarding Philippines, 25 October 2006, CEDAW/C/PHI/CO/6 at para. 26; Committee on the Elimination of Discrimination Against Women, Concluding Observations regarding Guatemala, 2 June 2006, CEDAW/C/GUA/CO/6 at para. 32.

⁸⁰ See already Art. 20 AoA, which partially fulfils this objective in the current agreement.

⁸¹ See generally James Harrisson and Alessa Goller, 'Trade and Human Rights: What Does 'Impact Assessment' Have to Offer?', *Human Rights Law Review* 8 (2008), pp. 587–615.

⁸² See Office of the High Commissioner for Human Rights, Report on indicators for monitoring compliance with international human rights instruments: a conceptual and methodological framework (HRI/MC/2006/7, 11 May 2006), para. 3.

⁸³ See Office of the High Commissioner for Human Rights, Report on indicators for monitoring compliance with international human rights instruments: a conceptual and methodological framework (HRI/MC/2006/7, 11 May 2006), para. 3.

⁸⁴ See, for a table of indicators based on the normative content of the right to food, Office of the High Commissioner for Human Rights, *Report on indicators for monitoring compliance with international human rights instruments* (HRI/MC/2008/3, 16 May 2008), at p. 24.

food. Mechanisms should be set up to allow for the adoption of such policies, in addition to – and not as a substitute for – a regular monitoring of the impact of trade agreements and their implementation on the right to food.

7.2.2. International Trade as a Component of National Strategies for the Realization of the Right to Food

States should ensure that the positions they take in trade negotiations - for example, as to which special products to protect, as to which schedules of commitments to accept, or as to which services to open up to foreign competition - will not result in obstacles to the realization of the right to food. States should define their positions in trade negotiations in accordance with national strategies for the realization of the right to food. The adoption of such strategies is recommended by the Committee on Economic, Social and Cultural Rights (General Comment No. 12, para. 21), and their content is further clarified by the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security adopted by States members of the General Council of the FAO on 23 November 2004. Such strategies should also be seen as tools to guide trade negotiations: only by mapping food insecurity and identifying which actions should be taken to combat hunger, will it be possible for those negotiating trade agreements to ensure that the commitments they make in trade negotiations will facilitate, rather than impede, efforts towards the fulfillment of the right to food of their population. Indeed, the usefulness of adopting such national strategies, based on a reliable mapping of food insecurity and vulnerability, goes far beyond the assistance it would provide negotiators in the WTO context. These strategies also should support the position of governments in their discussions with international financial institutions, with donors, or in bilateral trade negotiations. It is a particular source of concern that, in a large number of cases, States have been unable to use flexibilities allowed under the WTO agreements - or to apply certain tariffs remaining under their bound tariffs –, because of prescriptions from such institutions or because of bilateral free trade agreements that impose on them not to use flexibilities they are otherwise allowed under multilateral agreements. Adopting a national strategy for the realization of the right to food would strengthen the position of States in their discussions with these partners, at the same time that it would improve the accountability of governments to the rights-holders.

7.2.3. Transparency and Participation in Trade Negotiations

Right to food impact assessments and the adoption of national strategies for the realization of the right to food are tools which should support negotiators in ensuring that they will not adopt positions at international level which, at national level, would impede the realization of the right to food for all. In addition however, it is essential that national parliaments and civil society are provided opportunities to monitor the positions adopted by governments in trade negotiations. They should not be presented, at the very final stage of the negotiation process – once agreement has been reached –, with a set of commitments made by the Executive from which, at that stage, it will be politically very difficult or impossible to retreat from. National parliaments should regularly hold hearings

It is a particular source of concern that States have been unable to use flexibilities allowed under the WTO agreements because of bilateral free trade agreements.

National parliaments should regularly hold hearings about the positions adopted by the government in trade negotiations. about the positions adopted by the government in trade negotiations, and all groups affected, including in particular farmer's organizations, should have an opportunity to take part. The democratizing potential of right to food impact assessments will only fully materialize if such procedures are put in place at domestic level, in order to avoid a disconnection between commitments made at international level and efforts developed at national level for the realization of the right to food. This is particularly important in the context of trade agreements relating to agriculture, given the risks of an increased dualization of the farming system as a result of policies favoring the export sector, which is partly the result of disproportionate political influence being exercised in some countries by a relatively small number of very large agricultural producers – whereas smallscale farmers, in contrast, are poorly organized politically, and often unable to mobilize due to their geographical dispersion.⁸⁵

7.3. The Substantive Dimensions: Taking into Account the Right to Food in the Multilateral Trade Regime

7.3.1. Limiting the Dependency on International Trade

States should avoid excessive reliance on international trade in the pursuit of food security.

States should avoid excessive reliance on international trade in the pursuit of food security. 'Excessive' in this context should be understood as a situation in which, due to balance of payments difficulties or the lack of sufficient revenues from exports in other sectors, being dependent on the international markets to feed their population does not represent a sustainable option for States, in a context of increased price volatility and in which, most probably, the long-term trend towards declining prices of agricultural commodities is coming to an end. The short-term interest of States in procuring from international markets the food which they cannot produce locally at lower prices should not lead them to sacrifice their long-term interest in building their capacity to produce the food they need to meet their consumption needs. There are two reasons for this. First, while reasoning promoting allocative efficiency on the basis of specialization according to comparative advantage emphasizes the aggregate benefits, at country level, of trade liberalization, a perspective based on the right to food requires that we examine the impacts on the most vulnerable. Throughout the developing world, agriculture accounts for around 9 % of GDP and over 50 % of total employment. In the countries where more than 34 % of the population are undernourished, agriculture represents 30 % of GDP and 70 % of employment.86 Across all countries, the incomes of agricultural workers are significantly lower than in non-rural areas.⁸⁷ Therefore, for the realization of the right to food, there is no alternative but to increase the productivity of the agricultural sector, with an emphasis on smallscale farmers. Where the agricultural sector is fragile - i.e., where it is not competitive against the most competitive farmers in the world -, we cannot run the risk of limiting the policy space of governments by prohibiting them from maintaining tariff barriers, or from raising those barriers in the face of import

⁸⁵ See The World Bank, World Development Report 2008 - Agriculture for Development, Nov. 2007, at p. 43.

⁸⁶ FAO, The State of the Food Insecurity in the World 2003, p. 16.

⁸⁷ See above, n. 14.

surges. Such surges have had in the past disastrous effects on many producers in developing countries, impoverishing further the poorest in the rural areas. This may not be allowed to continue.

Second, by developing their capacity to feed their populations, States limit the vulnerability which results from the volatility of prices on international markets. As noted by the World Bank, "managing grain price risk is a fundamental requirement in a world characterized by more volatile international grain prices and recurring supply shocks that will likely result from global warming". See Consultations should be led on the needs to re-establish commodity stabilizing agreements for tropical products, cereals and oilseeds, sugar and cotton, all of which are of particular importance to developing countries, and on measures which could avoid the negative impacts of non-commercial speculation on the futures markets of those commodities. In the short term, we have to draw the consequences from the volatility of prices on international markets: each State should decide whether or not it is resilient enough to take the risk of increased vulnerability to external shocks, by maintaining or increasing its reliance on international markets to achieve food security at home – but it must to do in full awareness of the implications.

By developing their capacity to feed their populations, States limit the vulnerability which results from the volatility of prices on international markets.

7.3.2. Maintaining Flexibilities

At present, a relatively small proportion of the food produced, estimated at 15 %, is traded internationally. The percentages are 6.5 for rice, 12 for corn, 18 for wheat and 35 for soybeans. ⁸⁹ Yet, the prices fixed on international markets have an important impact on the ability of farmers in the world to make a decent living, since, as a result of trade liberalization, there is a tendency for domestic and world prices to converge, insofar as imported goods compete with domestically produced goods on local markets. States, particularly developing States in accordance with the principle of special and differential treatment, must therefore retain the freedom to take measures which insulate domestic markets from the volatility of prices on international markets. Unless the trade agreements they conclude provide for the necessary flexibilities, States may find themselves bound by certain disciplines which will make them vulnerable to the variations of prices on the international markets.

Developing States must retain the freedom to take measures which insulate domestic markets from the volatility of prices on international markets.

One risk is that local producers will be driven out by import surges. It is this which the establishment of a special safeguard measure seeks to avoid. Indeed, the measures States may take in order to strengthen their agricultural sector, including the measures which fall under the 'Green Box' of allowable forms of domestic support to agriculture, will remain ineffective in the absence of such flexibility. Certain countries have supply management schemes in place. Such schemes guarantee a remunerative price to producers while at the same ensuring stable

⁸⁸ Framework Document for proposed loans, credits, and grants in the amount of US\$ 1.2 billion equivalent for a Global Food Crisis Response Program (GFRP), 29 May 2008, at 6.

⁸⁹ M. Ataman Aksoy and John C. Beghin (eds.), *Global Agricultural Trade and Developing Countries* (Washington, D.C., the World Bank, 2005), pp. 177-179.

prices to consumers and a regularity of supply for processors and retailers. Countries should be encouraged to study such systems for management supply; they should be allowed to maintain or establish such schemes, although this may require that they be allowed to maintain import tariffs at levels allowing them to protect the products concerned from the impact of the arrival on domestic markets of low-priced products. It is particularly perplexing that certain management supply schemes, which seek to adapt production to demand and shield both producers and consumers from sudden shifts in prices, while at the same time ensuring processors a reasonable profit margin, would be threatened by proposals to reduce over-quota tariffs, even for products designated as sensitive because they are placed under such management schemes. Such schemes insure both producers and consumers against the fluctuations of prices on international markets. Their removal would be a retrogressive step in the realization of the right to food.

Another risk is that the net food buyers are made vulnerable to increases in prices, particularly since many developing States have little or no safety nets which protect the poorest segments of the population from such impacts. The Marrakesh Decision should insure net-food importing developing countries against this risk, but as we have seen, the answer it provides remains deeply unsatisfactory. For this Decision to be fully effective, it would need to include a mechanism to systematically monitor the impact of the AoA reform process on the NFIDCs; it would need to define the notion of 'adequate supplies' of basic foodstuffs (which, under the Decision, NFIDCs should be able to obtain from external sources 'on reasonable terms and conditions' throughout the reform process) by reference to the need to ensure that each individual has access at all times to adequate food or to means for its procurement, which is simply to say that the increased prices which may result from the reform process shall not result in violations of the right to food; and it would need to be fully implemented, which it is not for the moment.

Implementing the Marrakesh Decision would be consistent with the obligation of the WTO Members to respect the right to food also towards populations in other States.

Implementing adequately the Marrakesh Decision would be consistent with the obligation of the WTO Members to respect the right to food, not only towards their own populations, but also towards populations in other States, including their commercial partners which are impacted negatively by the reform program resulting from commitments under the AoA. Yet, even with an improved operationalization of the Marrakesh Decision, the problems of vulnerability of countries as a result of their dependency on international trade, and of the hidden costs of trade as a solution to achieving food security remain real. More food aid and more easily accessible and less conditional financing facilities to meet balance of payments problems are no substitutes for the strengthening within all countries of the agricultural sector, both in order to enhance their food security and as a means to reduce poverty and, thus, hunger.

The measures suggested above seek to ensure that reliance on international trade will not have adverse consequences on the realization of the right to food at domestic level. In negotiating trade agreements, all States should refrain from imposing on their trading partners that they make concessions that could run counter to their obligation to guarantee the human right to adequate food. Instead, the international trade regime should be designed to facilitate and support national

strategies for the realization of the right to food. The Committee on Economic, Social and Cultural Rights has identified 'the failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations' as a specific instance of violation of the right to food.⁹⁰ Indeed, their obligations towards the right to food are imposed on States not only towards persons found on their national territory, but also towards persons situated outside the national borders, taking into account the sovereign rights of the territorial State. For instance, where a State heavily subsidies agricultural products which are exported by economic actors based under its jurisdiction, thus crowding out the local producers in the receiving markets, this should be treated as a violation of the right to food by the exporting State, since it constitutes a threat to food security in the importing country. 91 This is also the spirit of the General Comment which the Committee on Economic, Social and Cultural Rights adopted on the relationship between economic sanctions and respect for economic, social and cultural rights, in which the Committee noted that States imposing sanctions should not, in doing so, jeopardize the economic, social and cultural rights of the population in the targeted State.92 As members of the United Nations, all States have committed themselves to cooperate internationally for the fulfillment of human rights (Article 56 of the UN Charter). The Universal Declaration of Human Rights refers to the right of everyone to an international social order which is conducive to the full realization of human rights. States are therefore under a duty to cooperate in the establishment of a multilateral regime of international trade which supports the right to food.

7.3.3. Controlling Market Power in the Global Supply Chains and Counteracting the Risk of Increased Dualization of the Farming System

One major imbalance in the current multilateral trade regime is that, while disciplines are imposed on States, transnational corporations, whose freedom to act has been significantly increased as a result, are not subject to any obligations as regards the exercise of their power on the market. This is an important gap in global governance. In the medium to long-term, a multilateral framework may have to be established to ensure a more adequate control of these actors. In the short term, States should act in accordance with their responsibility to protect human rights by adequately regulating actors on which they may exercise an influence, including in situations where these actors operate outside the national

⁹⁰ U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999), *The right to adequate food (art. 11)*, U.N. doc. E/C.12/1999/5, at para. 19. See also para. 36: 'States parties should, in international agreements whenever relevant, ensure that the right to adequate food is given due attention and consider the development of further international legal instruments to that end'.

⁹¹ See, *mutatis mutandis*, as regards the appropriate provision of food aid, U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999), *The right to adequate food (art. 11)*, U.N. doc. E/C.12/1999/5, at para. 39 ('Food aid should, as far as possible, be provided in ways which do not adversely affect local producers and local markets, and should be organized in ways that facilitate the return to food self-reliance of the beneficiaries').

⁹² U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 8 (1997): The relationship between economic sanctions and respect for economic, social and cultural rights, U.N. doc. E/1998/22.

territory of the States concerned.⁹³ While the exercise of extra-territorial jurisdiction constitutes one option in this regard, other initiatives could be taken by States, such as the imposition of transparency or reporting requirements, or the imposition of conditions for access to export credits, in order to ensure that commodity buyers, food processors, and global retailers, contribute to the realization of the right to food and abstain from practices which might threaten its enjoyment. The best practices identified in the global food supply chain could be identified and, once identified, scaled up. Particular attention could be paid to the possibility of using competition law in order to protect not only end consumers, but also farmers selling their crops, from excessive concentration or abuse of dominant positions on the market.

Another risk which trade liberalization in agriculture entails is that the largest agricultural producers, which will benefit more easily from the opportunities resulting from improved market access, will crowd out smaller farms, for the reasons stated above. In many countries, the smallscale farmers are among the most vulnerable segments of the population. States therefore owe them a special responsibility to counteract this tendency by supporting smallscale agriculture, in particular as regards access to land, water, genetic resources, and credit; and by investing in, and improving their access to, rural infrastructures.

7.4. Towards Socially and Environmentally Sustainable Trade

The future regulation of international trade in agricultural commodities should take into account the impact of various modes of agricultural production on climate change.

In addition to its obvious costs on the least competitive producers or on certain vulnerable segments of the population, the expansion of international trade in agricultural products may have hidden costs for the environment and for human health and nutrition; it may result in the smallest producers being offered prices so low for their crops that their revenues will hardly be sufficient to feed themselves and their families; and it may depress the wages of agricultural workers, as a result of increased international competition. The future regulation of international trade in agricultural commodities should take into account the impact of various modes of agricultural production on climate change, in order to allow countries to provide incentives in favor of forms of production, like organic farm-

⁹³ See, e.g., U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/2000/4 (2000), para. 39; or U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002), The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/2002/11 (26 November 2002), para. 31. In these general comments, the Committee affirms that States parties should 'prevent third parties from violating the right [protected under the International Covenant on Economic, Social and Cultural Rights] in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law'. Similarly, in 2007 the Committee on the Elimination of Racial Discrimination called on Canada to '...take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in Canada accountable' (CERD/C/CAN/CO/18, paragraph 17 (Concluding Observations / Comments, 25 May 2007)).

ing or agroecological practices, which better respect the environment, while at the same time contributing to food security. 94

In the future, the experience of Fair Trade schemes and other incentives-based initiatives should be studied, in order to examine whether they should be expanded and if so, how, in order to encourage socially and environmentally more sustainable trade. It may be asked, for example, whether inspiration could be sought from guidelines such as the Ethical Trading Initiative's smallholder guidelines, in order to promote sourcing practices which are more sustainable and which, instead of contributing to the dualization of the farming system, strengthen the capacities and increase the incomes of smallscale farmers.

⁹⁴ See the UNCTAD/UNEP, Organic Agriculture and Food Security in Africa, http://www.unep-unctad.org/cbtf/publications/UNCTAD_DITC_TED_2007_15.pdf.

⁽showing the potential of organic agriculture in increasing agricultural productivity and raising incomes through reliance on low-cost, locally available technologies, without causing environmental damage, but also highlighting the need for an enabling policy and institutional support in order to scale-up organic agriculture and its associated positive side-effects). This study is only the latest in a series of studies whose conclusions converge on this point. See in particular Jules Pretty et al. (2006), 'Resource Conserving Agriculture Increases Yields in Developing Countries', Environmental Science & Technology, vol. 40, No. 4 (2006) (reviewing 286 agricultural projects in 57 countries and concluding that low external input agriculture improves food crop productivity by an average of 79%).



Conclusions and Recommendations

A number of recommendations can be addressed to the WTO Members.

On the basis of the findings above, a number of recommendations can be addressed to the WTO Members:

- 1. It is axiomatic, first of all, that they should ensure that their undertakings under the WTO framework are fully compatible with their obligation to respect, protect and fulfill the right to food. This requires that they perform transparent, independent and participatory Human Rights Impact Assessments, before the conclusion of trade agreements. It also requires that they define their positions in trade negotiations in accordance with national strategies for the implementation of the right to food. Finally, national parliaments should be encouraged to hold regular hearings about the positions adopted by the government in trade negotiations, with the inclusion of all groups affected, including in particular farmers' organizations: only through such participatory mechanisms can it be ensured that trade liberalization will not result in bringing about benefits for the export sectors, without compensations for the sectors who will suffer most from foreign competition; and that trade liberalization will be carefully sequenced, aligned with the ability of the State concerned to adapt to the restructuration it will lead to.
- 2. Improved transparency and participation in the negotiation of trade agreements should also ensure that each State will choose democratically whether or not it can take the risk of becoming increasingly reliant on the international markets to achieve food security. This paper has identified the reasons why States should avoid excessive dependence on international trade in the pursuit of food security, and why they should instead build their capacity to produce the food needed to meet consumption needs, with an emphasis on smallscale farmers. It has also provided arguments in favor of maintaining the necessary flexibilities and instruments, like supply management schemes, to insulate domestic markets from the volatility of prices on international markets. Collectively, States should explore means of limiting the volatility of prices on the international markets of commodities, particularly for tropical products, oilseeds, sugar and cotton, for instance through commodity stabilization agreements. For poor countries, neither food aid nor the purchase of food commodities on the international markets are a substitute for strengthening their ability to feed their population by a robust agricultural sector serving the domestic market: although cheap food has been available from international markets and although prices have been declining for many years, this trend is now coming to a close, and the volatility of prices shall be greater in the future, particularly as the result of the merger between the food and the energy markets. However, where States do choose to increase their dependence on international trade - whether for the acquisition of export revenues or in order to achieve food security by buying food on the international markets –, this choice would be much more

Although cheap food has been available from international markets, this trend is now coming to a close, and the volatility of prices shall be greater in the future.

- acceptable in a context where mechanisms would be put in place in order to limit the volatility of prices on the international markets of commodities.
- 3. WTO Members should also fully implement the Marrakesh Decision. In order for this Decision to be fully effective, a mechanism should be established to systematically monitor the impact of the AoA reform process on the NFIDCs. WTO Members should agree on a definition of the notion of 'adequate supplies' of basic foodstuffs that refers to the need to ensure that each individual has access at all times to adequate food or to means for its procurement i.e., that the increased prices which may result from the reform process shall not result in violations of the right to food.
- 4. Trade liberalization leads to strengthen the position of transnational corporations in the global supply chains without imposing on them corresponding obligations. It is the duty of States to adequately regulate private actors over which they may exercise an influence, in discharge of their obligation to protect the right to food. They should also explore ways to reorient trade towards products and modes of production which better respect the environment and do not lead to violations of the right to food. The international community could support these efforts, by moving towards the development of a multilateral framework regulating the activities of commodity buyers, processors, and retailers, in the global food supply chain, including the setting of standards by these actors and their buying policies.

Further Occasional Papers:

N° 1 / December 2002

New Steps to Faster and Broader Debt Relief for Developing Countries

N° 2 / January 2003 Pedro Morazán: Deuda externa:

Nuevas crisis, nuevas soluciones?

N° 3 / March 2003

Money Laundering and Tax Havens: The Hidden Billions for Development

N° 4 / April 2003 Michaela Eglin

The General Agreement on Trade in Services (GATS) – A Background Note

№ 5 / April 2003 Sophia Murphy **The Uruguay Round Agreement on** Agriculture and its Renegotiation

N° 6 / May 2003 Eva Hartmann / Christoph Scherrer: Negotiations on Trade in Services – The Position of the Trade Unions on GATS

N° 7 / July 2003 Brigitte Young / Hella Hoppe

The Doha Development Round, Gender

and Social Reproduction

N° 8 / July 2003 Eric Teo Chu Cheow

Privatisation of Water Supply

N° 9 / October 2003 Katherine A. Hagen

Policy Dialogue between the International Labour Organization and the International Financial Institutions: The Search for Convergence

N° 10 / October 2003 Jens Martens

Perspectives of Multilateralism after Monterrey and Johannesburg

N° 11 / October 2003 Katherine A. Hagen The International Labour Organization: Can it Deliver the Social Dimension of Globalization?

N° 12 / March 2004 Jürgen Kaiser / Antje Queck
Odious Debts – Odious Creditors?
International Claims on Iraq

N° 13 / January 2005 Federico Alberto Cuello Camilo

What makes a Round a 'Development Round'? The Doha Mandate and the WTO **Trade Negotiations**

N° 14 / January 2005 Thomas G. Weiss **Overcoming the Security Council Reform Impasse.**

The Implausible versus the Plausible

N° 15 / February 2005 Gert Rosenthal

The Economic and Social Council of the United Nations. An Issues Papier

N° 16 / March 2005 Thomas Greven

Social Standards in Bilateral and Regional Trade and Investment Agreements Instruments, Enforcement, and **Policy Options for Trade Unions**

N° 17 / April 2005 Maria Floro and Hella Hoppe

Engendering Policy Coherence for Development – Gender issues for the global policy agenda in the year 2005 N° 18 / May 2005 Dirk Messner, Simon Maxwell, Franz Nuscheler, Joseph Siegle

Governance Reform of the Bretton Woods Institutions and the **UN Development System**

N° 19 / May 2005 Luke Eric Peterson

The Global Governance of Foreign Direct Investment: Madly Off in All Directions

N° 20 / August 2005

Nils Rosemann
The UN Norms on Corporate Human Rights
Responsibilities. An Innovating Instrument to Strengthen Business' Human Rights Performance

N° 21 / October 2005 Christoph Zöpel Global Democracy in the Nexus of Governments, Parliaments, Parties and Civil Cociety

N° 22 / April 2006 Theodor Rathgeber UN Norms on the Responsibilities of Transnational Corporations

N° 23 / July 2006 Felix Kirchmeier

The Right to Development – where do we stand? State of the debate on the Right to Development

N° 24 / August 2006 Jochen Steinhilber

China – A new actor in the Middle East and North Africa Region

N° 25 / September 2006 Jochen Steinhilber

"Bound to Cooperate?" Security and regional cooperation

N° 25 / September 2006 Jochen Steinhilber

"Bound to Cooperate?" Sicherheit und regionale Kooperation

N° 26 / November 2006 Luke Eric Peterson

South Africa's Bilateral Investment Treaties - Implications for Development and Human Rights

N° 27 / November 2006 Mahnaz Malik

Time for a Change: Germany's Bilateral Investment Treaty Programme and Development Policy

N° 28 / December 2006 Thomas G. Weiss and Peter J. Hoffman **A Priority Agenda for the Next UN Secretary-General**

N° 29 / December 2006 Jens Martens

Multistakeholder Partnerships – Future Models of Multilateralism?

N° 30 / April 2007 Robert Howse and Ruti G. Teitel

Beyond the Divide The Covenant on Economic, Social and Cultural Rights and the World Trade

Organization N° 31 / May 2007 Joseph E. Stiglitz and Stephanie Griffith-Jones

Growth and Responsibility in a Globalized World. Findings of the "Shadow G8"

N° 32 / June 2007 Aileen Kwa

Rethinking the Trading System

N° 33 / August 2007 Meghna Abraham

Building the New Human Rights Council – Outcome and analysis of the institution-building year

N° 34 / September 2007 Daniel Platz and Frank Schroeder

Moving Beyond the Privatization Debate Different Approaches to Financing Water and Electricity in Developing Countries

N° 35 / November 2007 Nahla Valji

Gender Justice and Reconciliation

N° 36 / November 2007 Karen Brounéus Reconciliation and Development Background study prepared for the

International Conference Building a Future on Peace and Justice

N° 37 / November 2007 Barnett R. Rubin / Alexandra Guáqueta Fighting Drugs and Building Peace Towards Policy Coherence between Counter-Narcotics and Peace Building

N° 38 / January 2008 Jack Boorman

A Agenda for Reform of the International Monetary Fund (IMF)

N° 39 / May 2008 David Kinley & Hai Nguyen

Viet Nam, Human Rights and Trade Implications of Viet Nam's Accession to the WTO

N° 40 / October 2008 Ramesh Thakur, Jane Boulden and Thomas G. Weiss

Can the NPT Regime be fixed or should it be abandoned?

N° 41 / February 2009 Nils Meyer-Ohlendorf Christiane Gerstetter

Damon Silvers

Trade and Climate Change Triggers or Barriers for Climate Friendly Technology Transfer and Development?

N° 42 / April 2009 Re-Defining the Global Economy Introduction: Joseph Stiglitz Dean Baker, Peter Bofinger, Kemal Derviş, John Eatwell, Eric Helleiner, Stanislaw Kluza, José Antonio Ocampo, Arturo O'Connell, Prabhat Patnaik, Avinash Persaud, Tony Porter,

N° 43 / May 2009 Maria S. Floro and Mieke Meurs Global Trends in Women's Access to "Decent Work"

N° 44 / June 2009 Jürgen Kaiser, Irene Knoke, Hartmut Kowsky Towards a Renewed Debt Crisis? Risk Profiles of the poorest countries in the light of the global economic slowdown

N° 45 / September 2009 Thomas G. Weiss, Tapio Kanninen, and Michael K. Busch

Sustainable Global Governance for the 21st Century

The United Nations confronts economic and environmental crises amidst changing geopolitics

About the Author:

Olivier De Schutter was appointed the UN Special Rapporteur on the right to food in 2008 by the United Nations Human Rights Council. He is independent from any government or organization. He teaches International Human Rights Law at the Catholic University of Louvain (Belgium). He is also a Member of the Global Law School Faculty at New York University and is Visiting Professor at Columbia University; University of Paris I-Panthéon-Sorbonne; College of Europe (Natolin); Abo Akademi University and Institute for Human Rights at Turku (Finland) and at the UNESCO Chair for Human Rights, National University of Benin (Abomey-Calavi), Cotonou.

In 2002-2006, he chaired the EU Network of Independent Experts on Fundamental Rights, a high-level group of experts which advised the European Union institutions on fundamental rights issues. He has acted on a number of occasions as expert for the Council of Europe and for the European Union. Since 2004, and until his appointment as the UN Special Rapporteur on the right to food, he was the General Secretary of the International Federation of Human Rights (FIDH) on the issue of globalization and human rights.

For further information on Dialogue on Globalization, please contact:

Friedrich-Ebert-Stiftung Berlin Hiroshimastrasse 28 D-10785 Berlin

Tel.: ++49-30-26-935-7407 Fax: ++49-30-26-935-9246

Roswitha.Kiewitt@fes.de

www.fes.de

www.fes-globalization.org

Friedrich-Ebert-Stiftung
Geneva Office
Chemin du Point-du-Jour 6 bis
CH-1202, Geneva

Tel.: ++41-22-733-3450 Fax: ++41-22-733-3545 fes.geneva@econophone.ch www.fes-globalization.org/geneva/ Friedrich-Ebert-Stiftung New York Office 747 Third Avenue, 22b New York, N.Y. 10017

Tel.: ++1-212-687-0208 Fax: ++1-212-687-0261

fesny@fesny.org

www.fes-globalization.org/new_york/